410.

SUPREME COURT OF THE UNITED STATES.

No. 130.

CHARLES A. WILLIAMSON AND CATHARINE, HIS WIFE, PLAINTIFFS,

vs.

JOSEPH BERRY.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT U. S. FOR THE SOUTHERN DISTRICT OF NEW YORK.

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CIRCUIT COURT OF THE UNITED STATES,
For the southern district of New York.

CHARLES A. WILLIAMSON & CATHARINE H., his wife,
vs.
JOSEPH BERRY.

Present, the honorable Samuel Nelson & Samuel R. Betts, judges.

This is an action of ejectment brought by the said plaintiffs, in right of the said Catharine, for the undivided third part of eight lots of land in the Sixteenth ward of the city of New York.

The defendant pleaded not guilty. The cause came on to be tried before the said court on the 20th day of June, A. D. 1845, and upon the trial the questions of law, hereinafter stated, arose, and a verdict was thereupon taken for the plaintiffs for the premises claimed, subject to the opinion of the court upon a case to be made. Such case was thereupon made, and was argued by counsel. The same, and the papers thereto annexed, are herewith certified, and are to be deemed a part of this certificate, as if inserted therein at length.

And after due deliberation thereon, the judges of the said court, on the 18th day of May, A. D. 1846, pronounced their judgment and opposition of opinion on certain points presented by the case as follows, to wit:

1. Under the will of Mary Clarke, the first born child of Thomas B. Clarke, at its birth, took a vested estate in remainder, which opened to let in his other children to the like estate as they were successively born.

2. This estate would have become a fee simple, absolute in the children living on the death of T. B. Clarke, the first day of May, 1826; and it is not important now to decide whether the trustees took a fee, under the will in trust, to convey to the children after his decease, or a fee for his life, as in the latter case the estate would vest in possession in the children at the death of T. B. Clarke, and in the former case the law would presume an execution of this trust by the surviving trustee on the death of T. B. Clarke, or the trust would be executed in 1830, by force of the revised statutes.

3. The several offers of the plaintiffs to give parol evidence to the jury touching the objects and operation of the acts of the Legislature, referred to in the case, or the effect of the orders of the chancellor therein stated upon the interests of the children of T. B. Clarke, or the failure of T. B. Clarke to apply or secure the proceeds of the devised estate, when disposed of by him, to and for the benefit of his children, or the consideration on which the devised estate was disposed of by T. B. Clarke, or his neglect to protect the estate from sacrifice for assessments, &c., or to provide for and support his children, were properly overruled by the court, with the exception of such particulars included in those offers as may be embraced in the points hereafter stated, upon which the judges are divided in opinion.

4. The acts of the Legislature of the State of New York, of April 1, 1814, March 24, 1815, and March 29, 1816, referred to in the case, are constitutional and valid.

But the judges are divided in opinion upon the following points presented by the case.

1. Whether the acts of the Legislature, stated in the case, devested the estate of the trustees under the will of Mary Clarke, and vested the whole estate in fee in Thomas B. Clarke.

2. Whether the authority given by the said acts to the trustee to sell was a special power, to be strictly pursued, or whether he was vested with the absolute power of alienation, subject only to re-examination and account in equity.

3. Whether the orders set forth in the case, made by the chancellor, were authorized by and in conformity to the said acts of the Legislature, and are to be regarded as the acts of the court of chancery, empowered to proceed as such in that behalf, or the doings of an officer acting under a special authority.

4. Whether the chancellor had competent authority, under the acts, to order or allow such sale or conveyance of the estate by the trustee, as is stated in the case, on any other consideration than for cash, paid on said conveyance.

5. Whether the deed, executed by Thomas B. Clarke to George De Grass, for the premises in question, being upon a consideration other than for cash, paid on the purchase, is valid.

6. Whether the said deed is valid, it having no certificate endorsed thereon that it was approved by a master in chancery.

7. Whether Thomas B. Clarke, having previously mortgaged the premises in fee to Henry Simmons, had competent authority to sell and convey the same to De Grass.

8. Whether the subsequent conveyance of the premises as set forth in the case, made by George De Grass, rendered the title of such grantee, or his assigns, valid against the plaintiffs.

It is thereupon, on motion of the plaintiffs by their counsel, ordered that a certificate of division of opinion, upon the foregoing points, which are here stated during this same term, under the direction of the said judges, be duly certified under the seal of this court to the Supreme Court of the United States to be finally decided.

UNITED STATES OF AMERICA,
Southern district of New York.

I, Alexander Gardiner, clerk of the circuit court for the southern district of New York, do hereby certify the foregoing to be a copy from the minutes.

Given under my hand and seal of office, at the city of New York, on the third day of August, in the year of our Lord one thousand
[L. S.] eight hundred and forty-six.

ALEX. GARDINER, *Clerk.*

Filed 15th September, 1846.

Case.

CIRCUIT COURT, U. S.,
Southern district, New York.

CHARLES A. WILLIAMSON &
CATHARINE H., his wife,
vs.
JOSEPH BERRY.

This is an action of ejectment for the undivided third part of eight lots of land, in the sixteenth ward of the city of New York.

The pleadings may be referred to as part of this case.

The plaintiffs claimed under the will of Mary Clarke.

The plaintiffs gave in evidence an exemplified copy of the will of Mary Clarke, proved in the Supreme Court, of which a copy is hereto annexed.

It was then admitted by the defendant's counsel, that Mary Clarke was seized of the premises described in the said will as "all that part of 'my said farm at Greenwich aforesaid, called Chelsea, lying to the 'northward of the line hereinbefore directed to be drawn from the 'Greenwich road to the Hudson river, twelve feet to the northward of 'the fence standing behind the house now occupied by John Hall; 'bounded southerly by the said line, northerly by the land of Corne-'lins Ray, easterly by the Greenwich road, and westerly by the Hud-'son, including that part of my said farm now under lease to Robert Lenox." At the time of the making of the will, and thence until her death, which took place in July 1802, that the said premises included the eight lots claimed herein; that the said trustees, Benjamin Moore and Charity his wife, and Elizabeth Maunsell, are all dead—Mrs. Moore having died since 1830, the other two previously; that Thomas B. Clarke was married in 1803; that his wife died in August, 1815, and himself on the first of May, 1826; that he left three children surviving him, Catharine, Isabella, and Bayard; that he had had four other children, all of whom died before him, without having had any children, and unmarried; that Catharine was born on the fifth of June, 1807, and was married to Charles A. Williamson, on the tenth of May, 1827; that Isabella was born on the 11th day of June, 1809, and was married to Rupert J. Cochran on the 4th day of June, 1835; that Bayard was born on the 17th day of March, 1815; all of whom are still living. It was also admitted that the defendant was the actual occupant of the premises at the commencement of this suit, on the 6th of March, 1845; and that one-third of the premises claimed was of greater value than two thousand dollars.

The plaintiffs thereupon rested.

The defendant's counsel then proved the acts of the legislature, the deed of Clement C. Moore, the petitions to the chancellor, the master's reports, and the orders of the chancellor, (excepting only the order endorsed on petition,) of which copies are hereto annexed.

The defendant's counsel then offered in evidence the deed from

Thomas B. Clarke to George DeGrasse, of which the following is a copy.

This indenture, made this second day of August, in the year of our Lord one thousand eight hundred and twenty-one, between Thomas B. Clarke, of the city of New York, gentleman, of the first part, and George DeGrasse, of the second part. Whereas, the said Thomas B. Clarke, by virtue of sundry conveyances, acts of the legislature, and orders of the court of chancery of the State of New York, hath been empowered to sell, or mortgage, or convey, in satisfaction of any debt due from him to any person or persons, the southern moiety of the estate at Greenwich, devised by Mary Clarke, deceased, for the benefit of the said Thomas B. Clarke and his children, or any part thereof. Now, therefore, this indenture witnesseth, that the said Thomas B. Clarke, in consideration of the premises, and of two thousand dollars, lawful money of the United States, to him in hand paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, convey and confirm, unto the said party of the second part, his heirs and assigns, forever, all those lots of ground situate, lying, and being in the Ninth ward of the city of New York, known and distinguished on a certain map of the property of the said Thomas B. Clarke, made by Amos Corning and Uzal W. Freeman, city surveyor, by the numbers five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), thirty-one (31), thirty-two (32), thirty-three (33,) thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38), thirty-nine (39), forty (40), forty-one (41), forty-two (42), forty-three (43), forty-four (14), forty-five (45), with all and singular the privileges, advantages, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining; and the reversion and reversions, remainder and remainders, rents, issues, and profits, thereof; and all the estate, right, title, interest, claim, and demand whatsoever, of the said party of the first part, either in law or equity, of, in, and to the above bargained premises, with the hereditaments and appurtenances; to have and to hold the said premises unto the said party of the second part, his heirs and assigns, forever. And the said Thomas B. Clarke, for himself, his heirs, executors, and administrators, doth covenant, grant, promise, and agree, to and with the said party of the second part, his heirs and assigns, that the above bargained premises, in the quiet and peaceable enjoyment of the said party of the second part, his heirs and assigns, against all and every person lawfully claiming, or to claim, the whole or any part of the above mentioned and described premises, shall and will warrant and defend forever.

In witness whereof, the said party of the first part hath hereunto set his hand and seal, on the day and in the year first above written.

T. B. CLARKE. [L. S.]

Sealed and delivered in the presence of—
JAS. CUNNINGHAM.

STATE OF NEW YORK, *ss:*

On this third day of August, 1821, personally appeared before me James Cunningham, whose identity was proved by the oath of James A. Hamilton, to me known; and said Cunningham having been duly sworn, testified that he knows Thomas B. Clarke to be the person mentioned in this deed, and that he saw him execute the same, and subscribed his name thereto as a witness to its execution. I allow the same to be recorded.

ELIJAH PAYNE, Jr.,
Commissioner, &c.

Know all men by these presents, that whereas John Wallis & Henry Simmons, together with one Robert Stewart, having obtained three several judgments against the within grantor, Thomas B. Clarke, wherein three several writs of fieri facias were issued; and whereas all the estate, right, title, and interest of the said Thomas B. Clarke, to the premises within mentioned and described, together with divers other premises, was sold by the sheriff of the city and county of New York, under and by virtue of the aforesaid writs. And whereas all the estate, right, title, and interest of the said Thomas B. Clarke, so sold as aforesaid, was his life estate in and to the said premises. And whereas, the said John Wallis and Henry Simmons became the purchasers thereof. And whereas the said John Wallis and Henry Simmons, by indenture bearing date the nineteenth day of April, in the year of our Lord one thousand eight hundred and seventeen, and which was recorded in the office of register, in and for the city and county of New York, in liber No. 120 of conveyances, page 475, on the eighth day of May, one thousand eight hundred and seventeen, as by reference thereto will more fully and at large appear, conveyed to James A. Hamilton, of the city of New York, esquire, in trust for the benefit of the said Thomas B. Clarke, all their right, title, and interest in and to the premises in the within indenture mentioned and described, together with divers other premises in the said indenture above referred to, as by reference to the record thereof will at large appear. Now, therefore, know ye, that I, James A. Hamilton, for the purpose of carrying into effect the said trust, and at the request of the said Thomas B. Clarke, which said request is testified by his having executed the within indenture, and in consideration of one dollar to me in hand paid by the within named George De Grasse, party of the second part to the within indenture, have, and by these presents, do remise, release, and quit claim to the said George De Grasse, and to his heirs and assigns, all my right, title, and interest, in and to the said twenty-nine lots of ground particularly mentioned and described in the within indenture, together with the appurtenances, unto the said George De Grasse, his heirs and assigns, and to his and their only proper use, benefit, and behoof.

In witness whereof, I have hereunto set my hand and seal, this third

of August, in the year of Lord one thousand eight hundred and twenty-one.

JAMES A. HAMILTON. [L. S.]

Sealed and delivered in the presence of—
JAS. CUNNINGHAM.

STATE OF NEW YORK, *ss*:

On this third day of August, in the year 1821, before me personally appeared James A. Hamilton, known to me to be the same person described in, and who executed, this instrument in writing, and he duly acknowledged that he had executed the same; there being no alteration therein, I allow the same to be recorded.

ELIJAH PAINE, Jr.,
Commissioner, &c.

Recorded in the office of the register of the city and county of New York, in liber 386 of conveyances, page 377, May 14th, 1838, at 40 min. past 12 m.

Examined by JAS. GULICK, *Register*.

It was objected to by the plaintiffs' counsel, for two reasons:

1. Because not approved by a master.
2. Because not shewn to have been given upon a sale for cash.

The objections were overruled, and the plaintiffs' counsel excepted.

The deed was then read in evidence, as was also a deed from George De Grasse to Margaret Van Surlay, of which the following is a copy:

Recorded for and at the request of Margaret Van Surlay, on the 29th day of March, 1822, at ¾ past 12 o'clock, P. M.

This indenture, made the twenty-eighth day of March, in the year of our Lord one thousand eight hundred and twenty-two, between George De Grasse, of the city of New York, and Maria his wife, of the first part, and Margaret Van Surlay of the city of New York, of the second part, witnesseth: that the said parties of the first part, for and in consideration of the sum of twelve hundred dollars, lawful money of the United States of America, to them in hand paid at or before the ensealing and delivery of these presents, by the said party of the second part, the receipt whereof is hereby acknowledged; and the said party of the second part, her heirs, executors, and administrators, forever released and discharged from the same by these presents; have granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, and to her heirs and assigns, forever, all those lots of ground, situate, lying, and being in the Ninth ward of the city of New York, known and distinguished on a certain map of the property of Thomas B. Clarke, of the said city of New York, gentleman, made by Amos Corning and Uzal W. Freeman, city surveyor, by the numbers one (1), two (2), three (3), and four (4). Bounded in the north by lots number forty-nine (49), fifty (50), and fifty-one (51); easterly by the Fitzroy road; southerly by

land belonging to Clement C. Moore, and westerly by lot number (5); and also all those lots of ground, situate, lying, and being in the said Ninth ward of the city of New York, known and distinguished on the said map of the said property of the said Thomas B. Clarke, by the numbers (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38), thirty-nine (39), forty (40), forty-one (41), forty-two (42), forty-three (43), forty-four (44), forty-five, the last mentioned twenty-nine lots lying and adjoining each other, and are bounded as follows, to wit: beginning at a point one hundred feet east of the Ninth avenue, on the southerly side of twenty-fifth street; thence, running along the southerly side of twenty-fifth street east, to the west boundary of lot number forty-six, (46); thence, southerly, along said west boundary of said lot number forty-six, ninety-eight feet nine inches, to the northern boundary line of lots number seven, six, and five; thence, easterly along said northern boundary of said lots seventy-five feet, to the westerly boundary of lot number four; thence, southerly, along said boundary of lot number four, to the property of C. C. Moore; thence, along the property of said C. C. Moore, to the easterly boundary of lot number nineteen; thence, along said eastern boundary line of said lot, to the south boundary line of lot number thirty-five; thence, westerly, along the south boundary line of lots No. 35, 34, 33, 32, 31, one hundred and twenty-five feet, to the eastern boundary of lot No. 27; thence, northerly, 98 feet 9 inches, on a line running northerly along the rear of lots No. 27, 28, 29, and 30, to the place of beginning. Together with all and singular the rights, members, privileges, hereditaments, and appurtenances whatsoever, unto the said above mentioned and described premises in any wise appertaining or belonging; and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and also all the estate, right, title, interest, dower and right of dower, property, possession, claim, and demand whatsoever, as well at law as in equity, of the said parties of the first part, of, in, and to the same, and every part and parcel thereof, with the appurtenances. To have and to hold the above granted, bargained, and described premises, and every part and parcel thereof, with the hereditaments and appurtenances, unto the said party of the second part, her heirs, and assigns, to her and their own proper use, benefit, and behoof forever; subject however to an indenture of mortgage, executed by the parties of the first part, to Elisha A. King and Ann Ball, executors of Flamen Ball, deceased, given to secure the payment of one thousand dollars, with interest, according to the condition of a certain bond or obligation of the said George De Grass. And the said George De Grass, for himself, his heirs, executors, and administrators, doth hereby covenant, grant, promise, and agree, to and with the said party of the second part, her heirs and assigns, that the said parties of the first part, at the time of the sealing and delivery of these presents, are lawfully seized in their own right

of a good, sure, absolute, and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted, bargained, and described premises, with the appurtenances, but subject to said mortgage; and have good right, full power, and lawful authority, to grant, bargain, sell, and convey the same in manner and form aforesaid; and that the said party of the second part, her heirs and assigns, shall and may, at all times, hereafter peaceably and quietly have, hold, use, occupy, possess, and enjoy the above granted premises, and every part and parcel thereof, with the hereditaments and appurtenances, without let, suit, trouble, molestation, eviction, or disturbance, of the said parties of the first part, their heirs or assigns, or of any other person or persons whomsoever, save by reason of said mortgage; and that the same now are free, clear, discharged, and unincumbered, of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments, incumbrances of what nature or kind soever, save said mortgage; and, also, that the said parties of the first part, and their heirs, and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title, or interest, of, in, or to the hereinbefore granted premises, by, from, under, in trust for them, shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, her heirs, and assigns, make, do, and execute, or cause, or procure to be made, done, and executed, all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law, for the better and more effectually vesting and confirming the premises hereby intended to be granted in and to the said party of the second part, her heirs, and assigns, forever, as by the said party of the second part, her heirs, or assigns, or her or their counsel, learned in the law, shall be reasonably devised, advised, or required; and the said George De Grass, and his heirs, the above described and hereby granted and released premises, and every part and parcel thereof, with the hereditaments and appurtenances, unto the said party of the second part, her heirs and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, shall and will warrant, and by these presents forever defend.

In witness whereof the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

GEORGE DE GRASS. [L. S.]
MARIA DE GRASS. [L. S.]

Sealed and delivered in the presence of—
the word southerly being partly written on erasure; also a red line three times written over, or in 3 blanks, all before signing.

ABRM. DE CAMP,
FRANS. R. TILLOU.

STATE OF NEW YORK, *ss:*

On the twenty-eighth day of March, 1822, in my presence, George De Grass and Maria, his wife, known to me to be the persons described in, and who executed and acknowledged the same to be their deed; and the said Maria being by me duly examined, separate and apart from her husband, confessed that she executed the same freely and voluntarily, and without any fear or compulsion of her husband; the alterations being noted, it is allowed to be recorded.

FRANCIS R. TILLOU,
Commissioner city & county New York.

The defendant's counsel then rested.

The plaintiffs' counsel then offered to read the petitions to the legislature, the extracts from the journals of the two houses, and the order endorsed on petition, of which copies are hereto annexed. They were objected to by the defendant's counsel, the objection sustained, and the plaintiffs' counsel excepted.

The plaintiffs' counsel then proved the mortgage executed by Thomas B. Clarke to Henry Simmons, of which the following is a copy:

This indenture, made the ninth day of April, in the year of our Lord one thousand eight hundred and nineteen, between Thomas B. Clarke, of the city and county of New York, one of the devisees named in the last will and testament of Mrs. Mary Clarke, deceased, of the first part, James A. Hamilton, of the same place, master in chancery, trustee of the said Thomas B. Clarke, (who has signified his assent by signing these presents,) of the second part, and Henry Simmons, of the city of New York, grocer, of the third part. Whereas the said Mary Clarke, in and by her last will and testament, executed by her in due form of law to pass real estate, did among other things devise unto Benjamin Moore and Charity his wife, and to Elizabeth Maunsell, the survivor or survivors of them, and to the heirs of such survivor or survivors of them, and to the heirs of such survivor forever, certain lands and real estate, of which the premises hereinafter mentioned and described, are a part in trust among other things for the benefit of the said Thomas B. Clarke, during his life. And whereas, by virtue of divers acts of the legislature of the State of New York, and by an order of the chancellor of the same State, made in pursuance thereof, at the city of Albany, on the fifteenth day of March, one thousand eight hundred and seventeen, the said Thomas B. Clarke has become authorized to mortgage the premises hereinafter mentioned and described, under the direction and approbation of one of the masters in chancery of the said State of New York; and whereas, the said Thomas B. Clarke, on or about the 4th day of April, in the year one thousand eight hundred and seventeen, executed and delivered to the said Henry Simmons, his certain indenture of mortgage of that date, upon forty-four lots of ground, in said mortgage described, being part of the premises which said Thomas B. Clarke is so authorized to mortgage as aforesaid, in order to secure to be paid to the said Henry Simmons the sum of two thousand two

hundred and fifty dollars, with the interest, to accrue thereon on or before the tenth day of January, in the year one thousand eight hundred and eighteen; and whereas, upon the default of the said Thomas B. Clarke to pay the said sum of money, and the interest which had accrued thereon, at the time specified for the payment thereof, the said Henry Simmons filed his bill of complaint in the court of chancery for this State; to which the said Thomas B. Clarke filed his answer, admitting the fact therein set forth; and whereas the said court, on the ninth day of November, in the year one thousand eight hundred and eighteen, ordered the mortgaged premises mentioned and described in the pleadings in that cause to be sold by one of the masters thereof; and whereas, under and by virtue of the said decree, the said mortgaged premises have been advertised for sale, under the direction of one of the masters of that court; and whereas, the said Thomas B. Clarke, party of the first part, hath executed and delivered to the said party of the third part, his certain bond, bearing even date with these presents, in the penal sum of fifteen hundred dollars, conditional for the payment of all, any, and every deficiency which may be and remain due to him, the said Henry Simmons, after the appropriation of the proceeds arising, or to arise, from the sale of the said lots, if the same shall be insufficient to pay the amount of principal and interest due to the said Henry Simmons of and upon the said mortgage, (if any deficiency there be,) together with the costs of foreclosing the same, including a fee of fifty dollars, to be paid to John Wallis, esquire, the solicitor of the said Henry Simmons, as by the said bond and the condition thereof may more fully and at large appear.

Now, therefore, this indenture witnesseth, that the said Thomas B. Clarke and the said James A. Hamilton, for the better securing and more sure payment of the said deficiency, if any there be, according to the condition of the said bond; and also, for and in consideration of one dollar, to them in hand paid by the said party of the third part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, aliened, enfeoffed, conveyed and confirmed, and by these presents do grant, bargain and sell, alien, release, convey and confirm, unto the said party of the third part, his heirs and assigns, forever, all those certain fifteen lots of ground situate, lying, and being at Greenwich, in the city of New York, known on a map of the estate of the said Thomas B. Clarke, made by Amos Corning and Uzal W. Freeman, city surveyors, by lots numbers thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38), thirty-nine (39), forty (40), forty-one (41), forty-two (42), forty-three (43), forty-four (44), forty-five (45), and taken together, are bounded as follows: northerly by twenty-fifth street, southerly by lots Nos. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22, easterly by lot number forty-six, and westerly by lots number 27, 28, 29, and 30, as by the said map will fully appear.

Together with all and singular the edifices, buildings, rights, mem-

bers, privileges, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining; and also all the estate, right, title, interest, dower, right of dower, property, possession, claim, and demand whatsoever in law or in equity of the said Thomas B. Clarke, and James A. Hamilton, of, in, and to the same, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof. To have and to hold the herein before granted premises, with all and singular the rights, members, privileges, hereditaments, and appurtenances thereunto belonging unto the said party of the third part, his heirs and assigns, to the only proper use, benefit, and behoof of the said party of the third part, his heirs and assigns, forever. Provided, always, and these presents are upon this condition, nevertheless, that if the said party of the first part, his heirs, executors, administrators, or assigns, shall well and truly pay to the said party of the third part, his executors, administrators, or assigns, the said deficiency mentioned in the condition of the said bond, if any there be, together with the interest thereon, according to the true intent and meaning thereof, that then and from thenceforth these presents, and the estate hereby granted, and everything herein contained, shall cease, determine, and be absolutely void to all intents and purposes; and the said party of the first part, for himself, his heirs, executors, and administrators, doth covenant, grant, and agree, to and with the said party of the third part, his executors, administrators, and assigns, that the said party of the first part shall and will well and truly pay to the said party of the third part, his executors, administrators, or assigns, the said deficiency, with the interest therein, (if any there shall be,) according to the condition of the said bond; and it is hereby mutually covenanted and agreed, by and between the parties to these presents, that if default shall be made in the payment of the said deficiency, (if any there be,) according to the condition of the said bond, with the interest which shall accrue thereon, that then and from thenceforth it shall and may be lawful for the said party of the third part, his heirs, executors, administrators and assigns, to enter into and upon all and singular the premises hereby granted or intended so to be, and to grant, bargain, and sell, and dispose of the same; and the same and all benefit and equity of redemption of the said parties of the first and second part, their heirs, executors, administrators, or assigns therein, at public auction, according to the act of the legislature in such case made and provided, and as the attorney of the said parties of the first and second part, for that purpose, by these presents duly constituted and appointed to make, seal, execute, and deliver to the purchaser or purchasers thereof, good and sufficient deed or deeds of conveyance in the law for the same in fee simple, and out of the monies arising from such sail to retain the principal and interest which shall be due on the said bond or obligation, according to the condition thereof, together with all the costs and charges of the advertisement and sale of same, rendering the overplus of the purchase monies to the said parties of the first and second parts, their executors, administrators, or assigns; which sale, so to be made, shall forever be a perpetual bar, both in law and equity,

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against the said parties of the first and second part, their heirs or assigns, and all other persons claiming, or to claim, the premises, or any part thereof, by, from, or under them, or any of them. And it is expressly agreed and understood, that the said James A. Hamilton is not in any event to be responsible for the monies hereby intended to be secured, or any part thereof, or guarantor to the title of the premises hereinbefore described, or any part thereof.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year above written.

T. B. CLARKE, [L. S.]
JAMES A. HAMILTON, [L. S.]
Master in chancery.

Sealed and delivered in the presence of—

NOTE.—The words "upon forty-four lots of ground in said mortgage described, being part of the premises which said Thomas B. Clarke is so authorized to mortgage as aforesaid," interlined between the 26th and 27th lines, first page of this mortgage, were so interlined before the execution thereof.

PETER T. MARSELIS.

NEW YORK, *ss:*

On this thirtieth day of April, in the year of our Lord one thousand eight hundred and nineteen, personally appeared before me, Peter T. Marselis, the subscribing witness to the above indenture, to me known, who, being sworn, said that he was acquainted with the persons who executed the same, and that he saw them severally execute the same, *and that he saw them severally execute the same*, there being no erasures or interlineations therein except those noted, and allow it to be recorded.

WILLIAM H. HARRISON,
Commissioner.

The plaintiff's counsel then offered evidence to shew the consideration of deed from Clarke to De Grasse. The defendant's counsel objected; the objection was overruled, and the defendant's counsel excepted.

The plaintiffs' counsel then called as a witness James A. Hamilton, who testified that he knew Thomas B. Clarke and George De Grasse, that in 1821 and for some years previous, he was a master in chancery, in the city of New York; that the order of March 15, 1817, was put into his hands for execution, and that Clarke and De Grasse applied to him to approve the deed from Clarke to De Grasse above set forth; that on that occasion, which was at or about the time the deed was given, they explained to him the consideration of the deed, and that the consideration for which it was given was some wild lands in Pennsylvania or Virginia, and an account for articles previously furnished to Clarke by De Grasse, out of an oyster house which he kept, including some items of money lent. On thus ascertaining its consideration, he refused to approve the deed.

On his cross examination he said, that he could not state the time at

which the transaction occurred, except by reference to the deed; he had more than one interview with Clarke and De Grasse, he was sought by them more than once; he did not consider the execution of the life estate deed a matter of any interest; he executed it as trustee. He did not remember at all a person by the name of James Cunningham; and on being shewn the signature of James Cunningham, as subscribing witness to the deed for the life estate, witness said that his recollection of the person was not thereby revived. He received from De Grasse no fee. It was his impression, that the account for articles furnished at the oyster shop *were* exhibited. He held the life estate of Clarke in the premises as trustee for Clarke. His impression was that Clarke filled up his own deed to De Grasse, and to obtain his sanction called upon witness; he was not certain that De Grasse was present upon that occasion. He did not recollect that De Grasse was present when the deed for life estate was executed, but he recollected that both Clarke and De Grasse came together to witness' office more than once on the subject, and he was besought by them frequently to approve the deed. In answer to a question by defendant's counsel, what evidence he had of the insufficient value of the lands which formed part of the consideration, the witness stated, that he had evidence enough then, though he did not recollect it now, that the lands were worthless tax lands. There might have been some money charged in De Grasse's account against Clarke; the whole account was for articles furnished previously. He did not recollect that there were any notes forming part of the consideration of the deed from Clarke.

The plaintiffs' counsel then proved that seven of the lots in suit, viz., numbers 5, 6, 7, 41, 42, 43, and 45, were re-conveyed to De Grasse on the 31st of October, 1844.

The defendants' counsel then proved that lot number 44 had been conveyed to Samuel Judd.

They also proved the bond of Clarke to Simmons, referred to in the aforesaid mortgage to Simmons, and called Henry M. Western, who being shewn two endorsements on the said bond, as follows:

Received, New York, October 18th, 1821, from Mr. George De Grasse, one hundred dollars on account of the within bond.
$100. H. SIMMONS.

Received of George De Grasse two hundred and fifty dollars, being in full for principal and interest, and all other claims and demands on account of the within bond, and also of the mortgage therein mentioned, for which mortgage I have this day entered satisfaction of record.
H. SIMMONS.

NEW YORK, *March 28th*, 1822.
Witness—
H. M. WESTERN.

Testified that he was a subscribing witness to the last, which he wrote; but that he recollected nothing of the transaction but from the paper.

The plaintiffs' counsel then offered to prove—

(1.) That the acts of the Legislature were not for the benefit of the infants, but for the benefit of Thomas B. Clarke merely.

(2.) That the orders of the chancellor had the effect to take the proceeds of their future interest in the property, and to apply the same to the father's debts without giving them any benefit, by support or otherwise, out of the income of the life estate in other parts of the property.

3. That under the acts and orders he actually aliened the lot on Broadway, and all of the southern moiety of the Greenwich property, excepting two lots, and that none of the children received any benefit from such alienation.

4. That the whole of this property was mortgaged or conveyed for old debts; that no proceeds were ever invested, or secured, or even received from the grantees or mortgagees.

(5.) That, so far from providing for the children, or protecting the estate, he suffered a large portion of the northern moiety to be sold for assessments, and was proceeding to dispose of the northern moiety for 21 years, when on the 31st March, 1826, a bill was filed against him on behalf of the children, and an injunction issued.

(6.) That the plaintiff, Mrs. Williamson, was, from the death of her mother in August, 1815, supported entirely by one of her aunts; and that after, about two years from the mother's death, the other children were supported by their friends, and were entirely neglected by their father; and that this was notorious in the city of New York, and would have been immediately known to any one making enquiry.

The defendant's counsel objected; the objection was sustained, and the plaintiff's counsel excepted.

A verdict was then taken for the plaintiffs for one undivided third part of the eight lots, subject to the opinion of the court upon the questions of law, with power to enter a verdict for defendants if such should be the opinion of the court, and with liberty to either party to turn this case into a special verdict or bill of exceptions.

Will of Mary Clarke.

In the name of God, amen. I, Mary Clarke, of the city of New York, widow and relict of Thomas Clarke, late of the same place, gentleman, at present of sound and disposing mind and memory, for which I bless God, do make, publish, and declare, this my last will and testament in manner following; that is to say, I will that all such debts as I shall justly owe at the time of my decease, and my funeral charges and expenses, be first paid by my executors hereinafter named. And as to my estate, real and personal, I dispose thereof as follows—first, I give and devise unto the Reverend Benjamin Moore and Charity his wife, and to their heirs in fee, all that certain dwelling house, and that part of the farm whereon I now live at Greenwich, called Chelsea, and all the buildings and improvements thereon erected, bounded southerly by the land of said Benjamin Moore, easterly by the highway called Greenwich road, and northerly by a line to be drawn commencing at a point in the said road, twelve feet to the north of the intersection of the

fence which now stands behind the house occupied by John Platt, and to run as nearly parallel to the said fence as a strait line down to Hudson's river will permit, so as to strike a cedar just planted in the ground not far from high water mark, and westerly by the Hudson aforesaid. To have and to hold the said hereby described premises, with the appurtenances, to the said Benjamin Moore and Charity his wife, and to their heirs in fee. Also, I give and devise unto the said Benjamin Moore and Charity his wife, the one equal undivided half part of my salt meadow, situate at a place called Harga, on Jersey shore, in the county of Bergen, to hold the same to them and their heirs in fee. I give and bequeath unto the said Benjamin Moore all my farming utensils of every description, and all my carriages, both for pleasure and for service, my horses and cattle of every description. And also all my slaves, to wit, Thomas and Ann his wife, Charles and Hester. I give and bequeath to my daughter Charity all my furniture and wearing apparel. Item, I give and devise unto my grandson, Clement C. Moore, son of the Rev. Benjamin Moore, twelve hundred acres of land situate in the patent of Kayaderosseras, with the appurtenances, the same now being divided into good farms, and under lease to different tenants, on the counterparts of whose leases I have written his name, as designating particularly that part of the said patent included in this devise; to have and to hold the said twelve hundred acres, and premises with the appurtenances to the said Clement C. Moore, and to his heirs in fee. Item, I give and devise to the said Clement C. Moore one other lot, a farm, situate in the said patent, and distinguished by lot number nine in the thirtieth allotment of the said patent, containing one hundred and six acres, to hold the same to the said Clement C. Moore and to his heirs in fee. Item, I give and devise unto the said Clement C. Moore and Thomas B. Clarke, a natural son of my son Clement, and to their heirs, all those four certain lots of land, situate in the said patent, containing, in the whole, two thousand seven hundred and seventy-seven acres, of which there is contained, in the eighteenth allotment of the said patent, five hundred acres, in the thirtieth allotment five hundred and thirty-seven acres and a half, and in the twenty-fourth allotment one thousand two hundred and thirty-four acres, and in the twenty-fifth allotment five hundred and five acres and a half; to hold the same to them, the said Clement C. Moore and Thomas B. Clarke, and to their heirs in fee. Item, I give and devise unto the said Benjamin Moore and Charity his wife, and to Elizabeth Maunsell, and their heirs forever as joint tenants, and not as tenants in common, all that certain lot of land number eight, in the said thirteenth allotment of the said patent, containing one hundred acres; also that part of my said farm at Greenwich aforesaid, called Chelsea, lying to the northward of the line hereinbefore directed to be drawn from the Greenwich road to the Hudson river, twelve feet to the northward of the fence standing behind the house now occupied by John Hall, bounded southerly by the said line, northerly by the land of Cornelius Ray, easterly by the Greenwich road, and westerly by the Hudson, including that part of my said farm now

under lease to Robert Lenox ; also all my house and lot, with the appurtenances, known by number seven, within the limits of the prison, and now occupied by Thomas Byron; to have and to hold the said hereby devised premises to the said Benjamin Moore and Charity his wife, and Elizabe th Maunsell, and to the survivor or survivors of them, and the heirs of such survivor, as joint tenants and not as tenants in common, in trust to receive the rents, issues, and profits thereof, and to pay the same to the said Thomas B. Clarke, natural son of my late son Clement, during his natural life, and from and after the death of the said Thomas B. Clarke, in further trust to convey the same to the lawful issue of the said Thomas B. Clarke living at his death in fee; and if the said Thomas B. Clarke shall not leave any lawful issue at the time of his death, then in the further trust and confidence to convey the said hereby devised premises to my said grandson Clement C. Moore, and to his heirs, or to such person in fee as he may by will appoint, in case of his death prior to the death of the said Thomas B. Clarke. Item, I give and demise unto the said Benjamin Moore and Charity his wife, and Elizabeth Maunsell, and to their heirs forever, as joint tenants and not as tenants in common, six hundred acres of land, with the appurtenances, situate in the said patent of Kayaderosseras, and divided into farms now under lease to different tenants, on the counterpart of whose leases I have marked the name of Clement Clarke, so as to designate the lots hereby devised ; also, all that lot on the opposite side of Greenwich road, now in the possession of Mr. Turner, also the wood lot adjoining the same, the said two lots containing about thirty acres in the whole ; to hold the said hereby devised premises to them, the said Benjamin Moore and Charity his wife, and Elizabeth Maunsell, and to the survivors or survivor of them, and the heirs of such survivor, as joint tenants and not as tenants in common, in trust to receive the rents, issues, and profits thereof, and to pay the same to Clement Clarke, a natural son of my late son Clement, during his natural life, and from and after the death of the said Clement, in further trust and confidence to convey the same to the lawful issue of the said Clement living at his death; and in case the said Clement should die without leaving lawful issue, then on the further trust and confidence to convey the same to my grandson Clement, son of the said Benjamin Moore, and to his heirs in fee, or to such person as he may by will appoint, in case of the death of the said Clement Moore prior to that of the said Clement Clarke. Item, I give and devise unto the said Benjamin Moore and Charity his wife, and Elizabeth Maunsell, and to their heirs forever as joint tenants and not as tenants in common, all that house and lot of ground situate in Hague street, in the city of New York; also all that lot of land situate in the patent of Kayaderosseras and lying on the Mohawk river, in the possession of one Northrup ; also the lot of land situate in the said patent, in the possession of Hacaleah Foster ; also seven hundred and fifty-one acres of land lying in the twenty-third allotment of the patent aforesaid; also six hundred acres divided into farms, now leased to different tenants, on the counterparts of whose leases I have endorsed the name of Samuel

Clarke, so as to designate the farms included in this devise of six hundred acres; to hold the same to the said Benjamin Moore and Charity his wife, and Elizabeth Maunsell, and to the survivors or survivor of them, and to the heirs of such survivor, as joint tenants and not as tenants in common, in trust to receive the rents, issues, and profits thereof, and to pay the same to Samuel Clarke, a natural son of my late son Clement, during his natural life, and from and after his death in the further trust and confidence to convey the same in fee to such lawful issue of the said Samuel as he may leave at the time of his death; and if the said Samuel shall die without leaving lawful issue living at the time of his death, then in the further trust to convey the same in fee to the said Clement Moore, son of the said Benjamin Moore, and to his heirs in fee, or to such person as he may by will appoint, in case of his death prior to that of the said Samuel Clarke. Item, I give and bequeath unto Charity Clarke, natural daughter of my late son Clement fifty-five pounds, to be paid quarterly and continued annually until she marries; the rent proceeding from the lot, leased to Mr. Turner and John Platt to be applied to this purpose. Also, I give and bequeath unto her, five hundred pounds, to be paid at her marriage or arrival at full age, whichever event may first happen. It is also my will that she be maintained frugally out of the moneys now at interest, and that a fund be kept for that purpose by my executors until her marriage or arrival at full age as aforesaid. Item, I give and bequeath unto Mary, natural child of my late son Clement, the annual sum of fifty pounds, and a frugal maintenance out of the moneys now at interest, and that a fund be kept by my executors for that purpose until her marriage. Also, I give to her the sum of five hundred pounds, to be paid at her marriage, or arrival at full age, whichever event may first happen. Item, I give and bequeath unto the said Thomas B. Clarke one thousand pounds, to be paid to him within three months after my decease. Item, I give and bequeath unto my daughter Mary, wife of Sir Gilbert Affleck, one thousand and five hundred pounds sterling, to be paid in one year after my decease. It is my further will that Richard, my slave, be manumitted by my executors on his arrival at full age, and that in the meantime he be put out to learn some trade, and be supported out of my estate during such his service. I do further direct that Rachel, my slave, be sold immediately after my decease by my executors, and all the rest, residue, and remainder of my estate, real and personal, of what nature soever and wheresoever, not before herein disposed of, I give, devise, and bequeath unto the said Clement Moore, and to the said five children of my son Clement, and to their heirs, executors, and administrators forever, as tenants in common, equally to be divided between them, share and share alike, at such times my executors may think discreet. And lastly, I do hereby nominate, constitute, and appoint my son-in-law the Reverend Benjamin Moore and Charity his wife, their son, the said Clement C. Moore, Elizabeth Maunsell, and said Thomas B. Clarke, executors and executrixes of this my last will and testament, hereby revoking all former and other wills by me made. In wit-

ness whereof, I, Mary Clarke, the testatrix, have to this my last will and testament, consisting of two sheets of paper, set my hand and seal this sixth day of April, in the year of our Lord one thousand eight hundred and two. Mary Clarke, (L. S.) Signed, sealed, published and declared by the said Mary Clarke within named, as and for her last will and testament, in the presence of us, who, in her presence and at her request, have hereunto set our names as witnesses.—The name "Moore," between the eighteenth and nineteenth lines, fourth page, and the words "be paid," between the twelfth and thirteenth lines, seventh page, being interlined. Thomas Salter, J. B. Provost, Peter Dayton.

Petition of T. B. Clarke to the Legislature, March 2, 1814.

To the honorable the Legislature of the State of New York, in Senate and assembly convened. The petition of Thomas B. Clarke, of the city of New York, humbly showeth.

That Mary Clarke, late of the city of New York, deceased, widow and relict of Thomas Clarke, late of the same place, gentleman, deceased, in and by her last will and testament, bearing date the sixth day of April, in the year of our Lord one thousand eight hundred and two, did, among other things, devise unto Benjamin Moore, and Charity his wife, and to Elizabeth Maunsell, and to their heirs forever, as joint tenants and not as tenants in common, certain real estate described in the said will, *in trust*, nevertheless to receive the rents, issues, and profits thereof, and to pay the same to your petitioner, the grandson of the said testatrix, during his natural life; and from and after the death of your petitioner, in further trust to convey the same to the lawful issue of your petitioner, living at his death, in fee; and if your petitioner should not have any lawful issue at the time of his death, then in the further trust and confidence to convey the said devised premises to Clement C. Moore, also the grandson of the said testatrix, and to his heirs, or to such person, in fee, as he might by will appoint, in case of his death prior to that of your petitioner.

And your petitioner further showeth unto the honorable the legislature, that the said Benjamin Moore, and Charity his wife, and the said Elizabeth Maunsell, the said trustees herein before named, have, in and by a certain instrument in writing under their hands and seals, bearing date the eleventh day of January last, consented and agreed to all such acts as the legislature of this State might deem proper to pass for the benefit and relief of your petitioner, or of his issue, his [heirs] and assigns, in and concerning the premises, and did thereby likewise request, that some other person or persons might be substituted for them in their place and stead, as trustees aforesaid, and that they might be discharged from their said trust.

And your petitioner further showeth unto the honorable the legislature, that Clement C. Moore, the devisee in remainder, upon the contingency happening in the said will, hath by a certain instrument in writing under his hand and seal, bearing date the said eleventh day of January last, consented also to all such acts as the legislature might

deem proper for the benefit and relief of your petitioner, or of his issue, heirs, and assigns, in and concerning the premises; the title, claim, and interest of the said Clement C. Moore, in and to the said lands, tenements, hereditaments, and real estate, in any wise notwithstanding.

And your petitioner further showeth to your honorable body, that by reason of many circumstances, the situation of the estate devised, and the phraseology of the said will, the said estate cannot be so improved and made productive as to answer the benevolent purposes of the testatrix. And your petitioner further showeth, that he hath married and hath issue, to wit, five children, and that he and his family cannot derive the benefit contemplated by the said will without legislative aid in the premises. That such aid is absolutely necessary for the support of your petitioner and his family.

Wherefore your petitioner humbly prays your honorable body for leave to introduce a bill into the legislature, making provision in the premises, and that the said bill may be passed into a law. And your petitioner will ever pray, &c.

T. B. CLARKE.

Endorsed. Thomas B. Clarke's petition. In Assembly, March 2d, 1814. Read and ref'd to Messrs. D. B. Ogden, Furman, Kissam.

State of New York, Secretary's office. I have compared the preceding with an original petition on file in this office, and do certify, that the same is a correct transcript therefrom, and of the whole of said original. And I further certify, that I have made diligent search among the records and papers in this office, and that I do not find any paper or document relating to any application of Thomas B. Clarke, except the petition of which the above is a transcript, and a deed from Clement C. Moore to Thomas B. Clarke, bearing date the 21st day of February, 1815, recorded in book of deeds, No. 39, page 140, &c. Nor do I find any evidence in this office, that any testimony was taken or read before the legislature, or any committee thereof, in relation to the application of said Thomas B. Clarke.

In testimony whereof, I have hereunto affixed the seal of this office, at the city of Albany, the fifth day of December, in the year of our Lord one thousand eight hundred and forty-four. [L. S.]

ARCHD. CAMPBELL, *Dep. Sec. of State.*

Extract from Assembly Journal.

March 7, 1814. Mr. D. B. Ogden, from the select committee, to whom was referred the petition of Thomas B. Clarke, reported: That the facts stated in the petition are true, and that in the opinion of the committee, the prayer thereof ought to be granted; they have prepared a bill for that purpose, and directed their chairman to ask for leave to bring in the same.

Ordered, That leave be given to bring in such bill.

Mr. Ogden, according to leave, brought in the said bill, entitled "an

act *for the relief of Thomas B. Clarke*," which was read the first time, and by unanimous consent was also read a second time, and committed to a committee of the whole house."

Act of April 1, 1814.

Whereas Mary Clarke, late of the city of New York, deceased, widow and relict of Thomas Clarke, late of the same place, gentleman, deceased, in and by her last will and testament, bearing date the sixth day of April, in the year of our Lord one thousand eight hundred and two, did, among other things, devise unto Benjamin Moore, and Charity his wife, and to Elizabeth Maunsell, and to their heirs forever, certain lands and real estate; to have and to hold to the said Benjamin Moore, and Charity his wife, and to the said Elizabeth Maunsell, and to the survivors or survivor of them, and to the heirs of such survivor, as joint tenants and not as tenants in common, in trust, to receive the rents, issues, and profits thereof, and to pay the same to Thomas B. Clarke, one of the devisees of the testatrix, during his natural life; and from and after the death of the said Thomas B. Clarke, in further trust, to convey the same to the lawful issue of the said Thomas B. Clarke, living at his death, in fee; and if the said Thomas B. Clarke should not have any lawful issue at the time of his death, then in the further trust and confidence to convey the said devised premises to Clement C. Moore, also one of the devisees of the said testatrix, and to his heirs, or to such person in fee, as he might by will appoint, in case of his death prior to that of the said Thomas B. Clarke. And whereas it appears to the legislature, that the property so devised as aforesaid is nearly unproductive, and, in its present situation, is incapable of being improved so as to yield an adequate income for the maintenance and support of the said Thomas B. Clarke and his family, whereby the benevolent intentions of the testatrix will be defeated, without the interposition and aid of the legislature. And whereas the said Benjamin Moore, and Charity his wife, and the said Elizabeth Maunsell, the said trustees named in the said will, in and by a certain instrument under their hands and seals, bearing date, and duly executed by them, on the eleventh day of January last, did consent and agree to all such acts as the legislature of this State should deem meet and proper to make for the benefit and relief of the said Thomas B. Clarke, or of his issue, heirs and assigns, in and concerning the premises; and also did, by the said instrument in writing, consent and desire that some other person or persons might be substituted for them in their place and stead, as trustees aforesaid, and they be discharged from the said trust. And whereas Clement C. Moore, the person named in the said will, and entitled to the contingent remainder, hath, by a certain other instrument in writing, under his hand and seal, bearing date and duly executed by him, on the said eleventh day of January last, consented and agreed to all such act or acts as the legislature might deem proper to make for the benefit and relief of the said Thomas B. Clarke: therefore,

I. Be enacted by the people of the State of New York, represented

in senate and assembly, that it shall and may be lawful for the court of chancery, on the application of the said Thomas B. Clarke, to constitute and appoint one or more trustees to execute and perform the several trusts and duties specified and set forth in the said in part recited will and testament, and in this act, in the place and stead of the said Benjamin Moore, and Charity his wife, and the said Elizabeth Maunsell, who are hereby discharged from the trusts in the said will mentioned. Provided, that it shall be lawful for the said court at any time thereafter, as occasion may require, to substitute and appoint other trustee or trustees in the room of any of those appointed in this act, in like manner as is practised in the said court in cases of trustees appointed therein; and such trustee or trustees so appointed, are hereby vested with the like powers as if he or they had been named and appointed in and by this act.

II. And be it further enacted, that the trustees appointed, or to be appointed by or under the authority of this act, or the major part of them, shall, as soon as conveniently may be, partition and divide all that certain tract of land described in the said last will and testament, as follows, viz: "All that part of my said farm at Greenwyck aforesaid, called Chelsea, lying to the northward of the line hereinbefore directed to be drawn from the Greenwyck road to the Hudson's river, twelve feet to the northward of the fence standing behind the house now occupied by John Platt, bounded southerly by the said line, northerly by the land of Cornelius Ray, easterly by the Greenwyck road, and westerly by the Hudson, including that part of my said farm now under lease to Robert Lenox," into two equal parts, one moiety whereof shall be held by them to the uses and upon the trusts declared in and by the said will, and the remaining moiety shall be subdivided by the said trustees, or the major part of them, into so many lots as they, or the major part of them, may think most likely to effect an advantageous sale thereof; and after having completed such subdivision, the said trustees, or a major part of them, are hereby authorized and required, within a convenient time thereafter, not to exceed six months, except at the request of the said Thomas B. Clarke, to sell and dispose of the said last mentioned subdivided moiety; and also that certain house and lot, described in the said last will and testament as follows, viz: "All my house and lot, with the appurtenances, known by number seven, within the limits of the prison, and now occupied by Thomas Byron," in such manner and upon such terms as they, or a major part of them, may deem best for the interest of the several parties interested therein; and thereupon to make and execute good and sufficient deeds or conveyances in the law to the purchaser or purchasers thereof; which deeds or conveyances shall operate to convey to the said purchaser or purchasers respectively, all the estate, right, and title, and interest, which the said Mary Clarke had at the time of her death in and to the said premises.

III. And be it further enacted, that the said trustees, or a major part of them, within a convenient time after the said sale, for the purpose of securing the principal of the proceeds thereof, to the uses to and according to the trust declared in and by the said will, and for the further pur-

pose of creating an income for the benefit and support of the said Thomas B. Clarke, his family and children, shall invest the said proceeds in any public stock of the United States or of this State, or bank stock, or shall put the same out at interest on real security from time to time, as they, or a majority of them, shall deem most for the interest of the parties concerned therein; and the said trustees, or a majority of them, shall, out of the interest or income of the said proceeds, in the first place, set apart and reserve for the first four years, eight hundred dollars a year; and from and after the expiration of the said four years, one thousand dollars a year, during the natural life of the said Thomas B. Clarke, which said annual reservations, together with the interest thereof, from time to time accruing, are to be invested in stock, or put out on real security by the said trustees, or a majority of them, for the purpose of creating an accumulating fund, at a compound interest, during the life of the said Thomas B. Clarke, for the benefit of his children after his decease, when the same is to be disposed of by the said trustees, or a majority of them, to the uses according to the trusts declared in and by the said last will and testament; and the residue of the said income that may remain from year to year, after making the reservations aforesaid, shall be paid by the said trustees, or a major part of them, to the said Thomas B. Clarke, for his use and benefit, and for the maintenance of his family, and education and support of his children.

IV. And be it further enacted, that the said principal sum of money arising from the said sales, and by this act directed to be vested or put out at interest aforesaid, shall be held by the said trustees, or the major part of them, according to the said will, that is to say, in trust to be assigned or paid over to the lawful issue of the said Thomas B Clarke, living at his death; and if the said Thomas B. Clarke shall not leave any lawful issue at the time of his death, then to be assigned or paid over to Clement C. Moore, or his representatives, or to such person as the said Clement C. Moore may by will appoint, in case of his death prior to that of the said Thomas B. Clarke.

V. And be it further enacted, that it shall and may be lawful for the said trustees, or a major part of them, during the natural life of the said Thomas B. Clarke, from time to time, to demise and let for the best rents that can be procured, and to such person or persons, with such covenants, and upon such terms, limitations, and conditions as the said trustees, or the major part of them, shall think expedient, all or any part or parcel of the land first above mentioned in the second section of this act, for and during any term of years not exceeding twenty-one, and to renew such leases or demises, to take effect from the date and execution thereof, and not in future or remainder, if such trustees, or the major part of them, shall judge proper, and to collect and receive the rents and profits thereof, and to pay the same over to the said Thomas B. Clarke, as they shall be received, for and during his natural life. Provided, that no lease shall be made, executed, or renewed under this section, but by the approbation and consent of the said Thomas B.

Clarke. And provided further, that upon the death of the said Thomas B. Clarke, the unexpired term or terms of any such leases shall be held by the trustees, or a major part of them, in trust, for the uses and purposes mentioned in the said before in part recited will, and none other, and to be deemed part and parcel of the estate thereby devised, according to the true intent and meaning of the said will.

VI. And be it further enacted, that in every case, not otherwise provided for by this act, the trustees appointed, or to be appointed in virtue thereof, shall be deemed and adjudged trustees under the said will, so far as relates to the premises mentioned and described in the recital to this act, in like manner as if such trustees had been originally named and appointed in the said will; and they shall, in all respects, be liable to the power and authority of the court of chancery for or concerning the trusts created by this act.

Petition of T. B. Clarke.

May 1, 1815.

To the honorable the legislature of the State of New York, represented in Senate and Assembly. The petition of Thomas B. Clarke, of the city of New York, respectfully showeth.

That since the passing of the act, entitled "an act for the relief of Thomas B. Clarke," passed April 1st, 1814, Clement C. Moore, in the said act named, and who, under the will of Mary Clarke, had a contingent interest in the estate thereby devised to the trustees for the benefit of your petitioner and his family, has released all his interest in the said property to your petitioner, his heirs, and assigns, by deed bearing date the 21st February, 1815, whereby your petitioner, and his infant children, are the *only* persons interested in the said estate.

That your petitioner has made every effort to procure a fit and proper person to execute the trusts created in and by the said act, but from the extent and nature of the duties required to be performed, he has not been able to prevail upon any suitable person to undertake the performance thereof.

Your petitioner, therefore, humbly prays for leave to present a bill *supplemental* to the said act, and to amend the same, and that the same may be enacted into a law. And he will ever pray, &c.

T. B. CLARKE.

Senate chamber, clerk's office, Albany, December 4, 1844.

I hereby certify, that the foregoing is a true copy of a petition on file among the legislative papers belonging to the Senate of the State of New York, remaining in this office; said petition presented March 1st, 1815. I further certify, that I have made diligent search among the legislative papers belonging to the said Senate for the years 1814, 1815, and 1816, and I cannot find among said papers any other petition or paper relating to any application or petition of Thomas B. Clarke, nor do I find any evidence among said papers, or remaining in this office, that any testi-

mony was taken, or produced before the said Senate, touching any application or petition of Thomas B. Clarke, except what appears in certain statutes relating thereto, printed in the session laws of this State.

ISAAC R. ELWOOD,
Clerk of the Senate of the State of New York.

Indenture.

This indenture, made the twenty-first day of February, in the year of our Lord one thousand eight hundred and fifteen, between Clement C. Moore, of the city and county of New York, gentleman, of the first part, and Thomas B. Clarke, of the same place, gentleman, of the second part, witnesseth: that the said party of the first part, for and in consideration of the sum of one dollar, to him in hand paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, remised, released, and forever quit-claimed, and by these presents doth grant, bargain, sell, remise, release, and forever quit-claim, unto the said party of the second part, his heirs and assigns forever, all the estate, right, title, interest, property, claim, and demand whatsoever of him, the said party of the first part, of, in, and to *all* those certain tracts, pieces, or parcels of land, described in the last will and testament of Mary Clarke, late of the city of New York, widow, deceased, as follows, viz: "All that part of my said farm, at Greenwyck aforesaid, called Chelsea, lying to the northward of the line herein before directed to be drawn from the Greenwyck road to the Hudson's river, twelve feet to the northward of the fence standing behind the house now occupied by John Platt; bounded southerly by the said line, northerly by the land of Cornelius Ray, easterly by the Greenwick road, and westerly by the Hudson, including that part of my said farm now under lease to Robert Lenox. And also, all my house and lot, with the appurtenances, known by number seven, within the limits of the prison, and now occupied by Thomas Byron," as by the said last will and testament, bearing date the sixth day of April, one thousand eight hundred and two, or the record thereof in the office of the clerk of the Supreme Court, will more fully appear, together with all and singular the appurtenances. To have and to hold the said premises, with the appurtenances, unto the said party of the second part, his heirs, and assigns, to the only proper use of the said party of the second part, his heirs and assigns, forever.

In witness whereof, the parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written. CLEMENT C. MOORE. [L. S.]

Sealed and delivered in the presence of—
BEV. ROBINSON.

CITY AND COUNTY OF NEW YORK, *ss:*

Personally appeared before me, James A. Hamilton, master in chancery in and for the State of New York, this twenty-second day of February,

in the year one thousand eight hundred and fifteen, Beverly Robinson, to me personally known, who, being sworn, deposed that he saw Clement C. Moore (to him well known to be the person described in the within instrument) execute the same as his voluntary act and deed, and that the said deponent subscribed his name as a witness to the same. All which being satisfactory to me, I do allow it to be recorded.

JAMES A. HAMILTON,
Master in chancery.

Recorded, February 28th, 1815, at noon, and agrees with the original compared therewith, by

ARCHD. CAMPBELL,
Dep. Secretary.

State of New York, Secretary's Office.

I have compared the preceding with a certain indenture recorded in this office, in Book of Deeds No. 39, page 140, &c., and do certify that the same is a correct transcript therefrom, and of the whole of said indenture. (Page 2, between lines 7 and 8, one line interlined.)

In testimony whereof, I have hereunto affixed the seal of this office, at the city of Albany, the eighteenth day of November, in the [L. S.] year of our Lord one thousand eight hundred and forty-four.

ARCHD. CAMPBELL,
Dep. Sec. of State.

Extract from Senate Journal.

March 1, 1815.

Mr. Van Buren asked for leave to bring in a bill, entitled "an act *supplemental to the act for the relief of Thomas B. Clarke*," passed April 1st, 1814.

Thereupon *ordered*, that leave be given to bring in such bill.

Mr. Van Buren, according to leave, brought in the said bill, which was read the first time, and by unanimous consent was also read a second time, and committed to a committee of the whole.

Act of March 24, 1815.

An act supplemental to the "act for the relief of Thomas B. Clarke," passed April 1, 1814.

Whereas, since the passing of the act entitled "an act for the relief of Thomas B. Clarke," Clement C. Moore, in the said act named, by an indenture duly executed by him, and recorded in the office of the Secretary of this State, and bearing date the twenty-first day of February, in the year one thousand eight hundred and fifteen, hath, for the consideration therein expressed, and in due form of law, released and conveyed unto the said Thomas B. Clarke, his heirs and assigns, forever, all the estate, right, title, interest, property, claim, and demand whatsoever, of the said Clement C. Moore, of, in, and to the real estate mentioned in the said act, whereby the said real estate became exclu-

sively vested in the said Thomas B. Clarke and his children. And whereas, the said Thomas B. Clarke hath prayed the Legislature to alter and amend the said act, particularly in relation to the interest of the said Clement C. Moore, and the execution of certain trusts in the said act mentioned, therefore.

I. Be it enacted by the people of the State of New York, represented in Senate and Assembly, that all the beneficial interests and estate of the said Clement C. Moore, or those under him, arising or to arise by virtue of the act to which this is a supplement, or by the will mentioned in the said act, shall be, and the same is hereby vested in the said Thomas B. Clarke, his heirs and assigns; and so much of the act to which this is a supplement as is repugnant hereto, and so much thereof as requires the trustees to set apart and reserve a certain annual stipend out of the interest or income of the property thereby directed to be sold for the purpose of creating and accumulating fund at compound interest, during the life of the said Thomas B. Clarke; and so much of the said act as requires the several duties therein enumerated, to be performed by trustees to be appointed by the Court of Chancery, as therein mentioned, be, and the same is hereby repealed.

II. And be it further enacted, that the said Thomas B. Clarke be, and his hereby authorized and empowered to execute and perform every act, matter and thing, in relation to the real estate mentioned in the act to which this is a supplement, in like manner and with like effect that trustees duly appointed under the said act might have done, and that the said Thomas B. Clarke apply the whole of the interest and income of the said property to the maintenance and support of his family, and the education of his children.

III. And be it further enacted, that no sale of any part of the said estate shall be made by the said Thomas B. Clarke, until he shall have procured the assent of the Chancellor of this State to such sale, who shall, at the time of giving such assent, also direct the mode in which the proceeds of such sale, or so much thereof as he shall think proper, shall be vested in the said Thomas B. Clarke as trustee; and, further, that it shall be the duty of the said Thomas B. Clarke, annually to render an account to the Chancellor, or to such person as he may appoint, of the principal of the proceeds of such sale only, the interest being to be applied by the said Thomas B. Clarke, in such manner as he may think proper, for his use and benefit, and for the maintenance and education of his children; and if, on such return, or at any other time, and in any other manner, the Chancellor shall be of opinion that the said Thomas B. Clarke hath not duly performed the trust by this act reposed in him, he may remove the said Thomas B. Clarke from his said trust, and appoint another in his stead, subject to such rules as he may prescribe in the management of the estate hereby vested in the said Thomas B. Clarke as trustee.

Petition of T. B. Clarke to the Chancellor, 28th June, 1815.

To the honorable James Kent, chancellor of the State of New York.

The petition of Thomas B. Clarke, of the city of New York, respectfully showeth:

That Mary Clarke, late of the city of New York, widow, deceased, the grandmother of your petitioner, in and by her last will and testament, bearing date the sixth day of April, in the year of our Lord one thousand eight hundred and two, did, among other things, devise unto Benjamin Moore and Charity his wife, and Elizabeth Maunsell, and to their heirs forever, certain premises in the Fifth ward of the city of New York, consisting of a house and lot fronting on Broadway, and then occupied by one Thomas Byron; and certain other premises situate at Greenwich, in the Ninth ward of the said city of New York, on the Hudson's river, being all that part of the farm of the said Mary Clarke at Greenwich aforesaid, called Chelsea, lying on the northward of a certain line by her, the said Mary Clarke, in and by her said last will and testament directed to be drawn from the Greenwich road to the Hudson's river, twelve feet to the northward of the fence standing behind the house then occupied by John Platt; bounded southerly by the said line, northerly by the land of Cornelius Ray, easterly by the Greenwich road, and westerly by the Hudson river, including that part of the said farm under lease to Robert Lenox, with the appurtenances; to have and to hold to the said Benjamin Moore and Charity his wife, and the said Elizabeth Maunsell, and to the survivors and survivor of them, and the heirs of such survivor, as joint tenant and not as tenant in common, in trust, to receive the rents, issues, and profits thereof, and to pay the same to your petitioner, one of the devisees of the testatrix, during his natural life; and from and after the death of your petitioner, in further trust to convey the same to the lawful issue of your petitioner living at his death, in fee; and if your petitioner should not have any lawful issue at the time of his death, then in the further trust and confidence to convey the said devised premises to Clement C. Moore, also one of the devisees of the said testatrix, and to his heirs, or to such person in fee as he might by will appoint, in case of his death prior to that of your petitioner, as by the said last will and testament of the said Mary Clarke, deceased, reference being had to the same, fully and at large may appear. And your petitioner further showeth, that the said devised premises, situate at Greenwich aforesaid, contain thirty-nine acres and one-half acre of land, or thereabouts, and that four acres and three quarters of an acre thereof, or thereabouts, were under lease to the said Robert Lenox, in the said will named, for a term whereof about three years are yet unexpired, at the yearly rent of twenty-five dollars per acre per annum. And your petitioner further showeth, that since the death of the testatrix, about three roods and twenty-five perches of the said premises have been leased by the trustees in the said will named by your petitioner as their attorney, to the said Robert Lenox, for a term of years whereof about ten years are yet unexpired, at the rate of the yearly rent of forty-five dollars per acre;

and ten acres and one rood of the same premises, or thereabouts, have been leased by the said trustees, by your petitioner as their attorney, to Michael Hagan, for a term whereof ten years, or thereabouts, are unexpired, at the yearly rent of four hundred and sixty-one dollars and fifty-four cents per annum; and that the residue of the said premises, being about twenty-four acres of land, are under lease from the said trustees, by your petitioner as their attorney, to the President and Directors of the Manhattan Company, for securing to them the payment of the sum of four thousand four hundred dollars, borrowed of them by your petitioner, with interest for the same, part of which said last mentioned leasehold premises are underlet by the said lessees thereof, at the yearly rent of two hundred dollars, or thereabouts. And your petitioner further showeth, that the said lot fronting on Broadway, in the Fifth ward of the city of New York, is under lease to George Sinclair, for the term of twenty-one years, from the first day of May, in the year one thousand eight hundred and thirteen, at the yearly rent of four hundred and fifty dollars per annum. And your petitioner further showeth, that some time in the year one thousand eight hundred and fourteen, the said devised premises, not yielding a sufficient revenue or income to support your petitioner and family, and in its then situation, and the condition in which it was placed by the said will of the said testatrix, not admitting of being so improved as to yield an adequate income for that purpose, and the said Benjamin Moore and Charity his wife, and Elizabeth Maunsell, the said trustees in the said will named all being aged, or infirm, and wishing to be discharged from the said trust, and as well they, the said trustees, in and by an instrument of writing under their hands and seals, bearing date and executed by them on or about the eleventh day of January, in the said last mentioned year, as also the said above named Clement C. Moore, by an instrument in writing under his hand and seal, bearing date on or about the same last mentioned day and year, consenting and agreeing to all such acts the Legislature of this State should deem meet and proper to make for the benefit and relief of your petitioner, or of his issue, heirs and assigns, in and concerning the premises; and they, the said Benjamin Moore and Charity his wife, and Elizabeth Maunsell, by the said instrument in writing, under their hands and seals, also consenting and desiring that some other person or persons might be substituted for them, in their place and stead as trustee as aforesaid, and they be discharged from the said trus , your petitioner made application to the Legislature of this State for aid and relief in and concerning the premises, and an act was thereupon passed, by the said Legislature, on the first day of April, in the same last mentioned year, entitled "an Act for the relief of Thomas B. Clarke," and in and by which said act it was, among other things contained therein, enacted, in substance, and to the effect, as follows, that is to say, that it should and might be lawful for the court of Chancery on the application of your petitioner, to constitute and appoint one or more trustees, to execute and perform the several trusts and duties specified and set forth in the said last will and testament of the said before

named testatrix, in the place and stead of the said Benjamin Moore and Charity his wife, and Elizabeth Maunsell, who were thereby discharged from the trusts in the said will mentioned; and further, that the trustees to be appointed under the authority of that act, or the major part of them, should, as soon as conveniently might be, partition and divide the said tract of land and premises, situate at Greenwich aforesaid, and in and by the will aforesaid devised by the said testatrix to your petitioner as aforesaid, into equal parts, one moiety whereof should be held by them to the use and upon the trusts declared in and by the said will, and the remaining moiety should be subdivided by the said trustees, or the major part of them, into so many lots as they, or the major part of them, might think thereto most likely to effect an advantageous sale thereof; and after having completed such subdivision, the said trustees, or the major part of them, were, by the said act, authorized and required, within a convenient time thereafter, not to exceed six months, except at the request of your petitioner, to sell and dispose of the said subdivided moiety, and also the said house and lot fronting on Broadway, in the Fifth ward of the city of New York, in such manner and upon such terms as they, or the major part of them, might deem best for the interest of the several parties interested therein, and thereupon to make and execute good and sufficient deeds or conveyances in the law, to the purchaser or purchasers thereof; which deeds or conveyances should operate to convey to the said purchaser or purchasers respectively, all the estate, right, title, and interest which the said Mary Clarke, the said testatrix had, at the time of her death in and to the said premises; and further, that the said trustees, or a major part of them, within a convenient time after the said sale, for the purpose of securing the principal of the proceeds thereof to the uses and according to the trust declared in and by the said will, and for the further purpose of creating an income for the benefit and support of your petitioner, his family and children, should invest the said proceeds in any public stock of the United States, or of this State, or bank stock, or should put the same out at interest on real security from time to time as they, or the major part of them, should deem most for the interest of the parties concerned therein; and that the said trustees, or a major part of them, should, out of the interest and income of the said proceeds, in the first place set apart and reserve for the first four years, eight hundred dollars a year, and from and after the expiration of the said four years, one thousand dollars a year, during the natural life of your petitioner; the said annual reservation, together with the interest thereof from time to time accruing, to be invested in stock, or put out on real security, by the said trustees, or a majority of them, for the purpose of creating an accumulating fund at a compound interest, during the life of your petitioner, for the benefit of his children after his decease, to be then disposed of by the said trustees, or a majority of them, to the uses and according to the trusts declared in and by the last will and testament aforesaid; and that the residue of the said income that might remain from year to year, after making the reservations aforesaid, should be paid by the said trustees, or a major part of them, to your petitioner,

for his use and benefit, and for the maintenance of his family, and the education and support of his children. And in and by which said act of the legislature aforesaid, it was further enacted, in substance, that the said principal sum of money arising from the said sales, and by that act directed to be vested and put out at interest as aforesaid, should be held by the said trustees, or the major part of them, according to the will aforesaid, that is to say, in trust to be assigned and paid over to the lawful issue of your petitioner living at his death; and if your petitioner should not have any lawful issue at the time of his death, then to be assigned or paid over to the aforesaid Clement C. Moore, or his representatives, or to such person as the said Clement C. Moore might by will appoint, in case of his death prior to that of your petitioner, as by the said act of the legislature in that behalf, reference being had thereto, may fully appear, and to which act your petitioner for greater certainty begs leave to refer himself. And your petitioner further showeth, that the said Clement C. Moore, in the act aforesaid named, having after the passing of the said act by an indenture duly executed by him, and recorded in the office of the Secretary of this State, bearing date on or about the twenty-first day of February, in the year one thousand eight hundred and fifteen, for the consideration therein expressed, and in due form of law, released and conveyed unto your petitioner, his heirs and assigns for ever, all the estate, right, title, interest, property, claim, and demand whatsoever of him, the said Clement C. Moore, of, in, and to the real estate mentioned in the said act, whereby the said real estate became exclusively vested in your petitioner and his children; a certain other act of the legislature of the State of New York was, on or about the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and fifteen, passed on the application of your petitioner, for the further aid and relief of your petitioner in the premises, entitled "an act supplemental to the act for the relief of Thomas B. Clarke," passed April first, one thousand eight hundred and fourteen, in and by which said last mentioned supplemental act it was, amongst other things contained therein, enacted, in substance as follows, that is to say, that all the beneficial interest and estate of the said Clement C. Moore, or those under him, arising, or to arise by virtue of the acts to which that supplementary act is a supplement, or by the will mentioned in the said first or original act, should be, and the same was, by the said supplemental act, vested in your petitioner, his heirs and assigns; and so much of the said original act, to which the said supplemental act was a supplement, as was repugnant thereto, and so much of the said original act as required the trustees to set apart and reserve a certain annual stipend out of the interest or income of the property thereby directed to be sold, for the purpose of creating and accumulating from it compound interest, during the life of your petitioner; and so much of the said act as required the several duties therein enumerated to be performed by trustees, to be appointed by the court of chancery, as therein mentioned, should be, and the same was, by the said supplemental act, repealed; and further, that your petitioner should be, and he was, and he is, by the said sup-

plemental act, authorized and empowered to execute and perform every act, matter, and thing, in relation to the real estate mentioned in the act to which that supplemental act was a supplement, in like manner, and with like effect, that trustees duly appointed under the said act might have done; and that your petitioner apply the whole of the interest and income of the said property to the maintenance and support of his family, and the education of his children; and in and by which said supplemental act it is further enacted, that no sale of any part of the said estate shall be made by your petitioner, until he, your petitioner, shall have procured the assent of the chancellor of this State to such sale, who shall, at the time of giving such assent, also direct the mode in which the proceeds of such sale, or so much thereof as he shall think proper, shall be vested in your petitioner, as by the said last mentioned and supplemental act, reference being had to the same, may, among other things contained therein, fully and at large appear, and to which, for greater certainty, your petitioner begs leave to refer himself. And your petitioner further showeth, that he has a large and expensive family, consisting, besides himself, of a wife and six children, the eldest of whom is of the age of between eleven and twelve years, and the youngest an infant under the age of one year. And your petitioner further showeth, that the rents, profits, and income of the said real estates and premises so devised to him by the said Mary Clarke, the aforesaid testatrix, in manner aforesaid, and in the said acts of the legislature mentioned as aforesaid, are the sole and only resource and dependence of your petitioner for the maintenance and support of himself and his family, and the education of his children, several of whom are of ages that require an annual expenditure to a considerable amount therein. And your petitioner further showeth, that the said rents, profits, and income of the said estates, are wholly inadequate and greatly deficient to and for the said purposes, and that the same have been inadequate thereto ever since the marriage and settlement in life of your petitioner and his wife. And your petitioner further showeth, that he has no profession or calling whereby he could add, by his earnings therein, to his income or resources; and that, to supply the said deficiency which has been continually increasing, and to provide and procure the necessary funds and means for the support and maintenance of himself and his family, he, your petitioner, has been reduced to the necessity of incurring debts, and having recourse to loans; and that for those purposes, and the discharge of other demands against him, he borrowed of the President and Directors of the Manhattan Company aforesaid the aforesaid sum of four thousand four hundred dollars, in the year of our Lord one thousand eight hundred and five, the chief part of which was required for, and applied to, the exigencies of his family, and that he has subsequently contracted debts by the purchase on credit of article of indispensable necessity for himself and family, and by borrowing money of individuals, to be applied, and which has been applied, to the same purposes, to the amount of four thousand five hundred dollars and upwards; and that he is now indebted in the premises for principal and interest, in the

sum of and upwards. And your petitioner further showeth, that his own necessities, and the interest and welfare of his wife and children, require that sale should be made of what was authorized and directed by the herein first above mentioned act to be sold, of the said real estates and devised premises in the said act mentioned, and that so much of the net proceeds to arise and be received, by and from such said sale thereof, as may be necessary for the purpose, should be appropriated and applied in and for the payment and discharge of the said debts, so contracted and incurred by your petitioner for the purposes aforesaid; and the residue of the said net proceeds be vested in your petitioner as trustee under the supplemental act aforesaid, upon the trusts and for the purposes in and by the said act, in this behalf, expressed and declared, in the mode wherein your honor shall see fit, and be pleased to direct the same to be so vested in him, your petitioner. And your petitioner further showeth, that he understands and believes, that the lessees and occupants of the eastern moiety or half part of the said premises at Greenwich, in the Ninth ward of the city of New York, to be divided by a line drawn from the land of C. Ray to the southern boundary of the said premises, except a small part thereof, will consent that the said leasehold premises should be sold free and discharged from their said leases thereon, and unencumbered thereby. Wherefore your petitioner respectfully prays, that your honor will be pleased to authorize, assent to, and direct the sale of said eastern moiety or half part of the said premises at Greenwich aforesaid, to be divided in manner aforesaid, or the one moiety or half part of the said premises, according to some other division and partition thereof, to be designated and directed by your honor; as also the said house and lot of ground and premises fronting on Broadway aforesaid, in the Fifth ward of the city of New York aforesaid, by your petitioner, for the objects and purposes hereinbefore mentioned, and by the act aforesaid authorized and contemplated; and that your honor will be pleased to give such directions, for and touching the said sales thereof, as may appear to your honor to be meet and proper; and that your honor will be pleased to authorize, order, and direct at the same time, that so much of the nett proceeds of such sales as may be necessary for the purpose be appropriated and applied in and for the payment and discharge of the said debts so contracted and incurred by your petitioner as aforesaid, for the purposes aforesaid, and that the residue of the said nett proceeds of the said sales be vested in the name of your petitioner as trustee as aforesaid, in and upon some good productive stocks or funds of a permanent nature, or at interest upon real security, or otherwise as your honor may see fit to order and direct; and your petitioner will ever pray, &c.

T. B. CLARKE.

STATE OF NEW YORK, *ss:*

Thomas B. Clarke, the petitioner in the foregoing petition named, being duly sworn, deposeth and saith, that the facts set forth and contained in the said foregoing petition, which rests in his knowledge, are

true; and that those which he derives from the information of others, he believes it to be true.

T. B. CLARKE.

Sworn 28th day of June, 1815, before
THEOD. V. W. VARICK,
Mast. in Chancery.

(28th June, 1815.)
A copy,
HIRAM WALWORTH,
Assistant Register.

Order of reference.

At a court of chancery held for the State of New York, at the city hall of the city of New York, on the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and fifteen: present, the honorable James Kent, esq., chancellor. In the matter of the petition of Thomas B. Clarke, under the acts of the legislature herein mentioned. On reading the petition in this matter, praying for the assent of the chancellor to the sale of the premises in the said petition mentioned, and in and by the acts of the legislature of the State, passed on the first day of April, in the year of our Lord one thousand eight hundred and fourteen, entitled "an act for the relief of Thomas B. Clarke, and the act supplementary thereto, in the said petition mentioned, for the objects and purposes in the said last mentioned act and the petition mentioned, and for the direction of the chancellor for the application of so much of the proceeds of the said sales, as may be necessary, to and for the payment of the debts of the petitioner in the said petition mentioned, and of the mode in which the residue of the said proceeds shall be vested in the petitioner as trustee, made in pursuance of the supplemental act aforesaid, and the affidavit of the petitioner of the truth of the facts set forth in his said petition, which petition and affidavit being filed, on motion of Mr. S. Jones, jr., of counsel for the petitioner, it is ordered, that it may be referred to one of the masters of this court, to examine into the allegations and matters in the said petition set forth and contained, and to report thereon to this court with all convenient speed, and that all directions be reserved until the coming in of the said report."

Master's report, dated 30th day of June, 1815.

In chancery. In the matter of the petition of Thomas B. Clarke, under the acts of the Legislature, in the said petition mentioned.

STATE OF NEW YORK, *ss:*

In pursuance of an order of this honorable court, made in the above matter, and bearing date on the twenty-eighth day of June, one thousand eight hundred and fifteen, by which it is referred to one of the masters of this court to examine into the allegations and matters in the said petition of the said Thomas B. Clarke set forth and contained, and report thereon with all convenient speed. Now, therefore, I, the subscriber, one of the masters of this court, do respectfully report, that I have ex-

amined the act entitled "an act for the relief of Thomas B. Clarke," passed April 1st, 1814, and the act passed on the twenty-fourth day of March, 1815, entitled "an act supplemental to the act for the relief of Thomas B. Clarke," passed April 1st, 1814, in the said petition in part recited and referred to, and find that the matters and things therein contained, and the authority and estate thereby vested, are the same in substance and purport as in or by the said is set forth and recited. And I do further report, that four acres and three-fourths of an acre, parcel of the premises, situate at Greenwich, in the said petition mentioned, were leased to Robert Lenox, in the said petition named, from the first day of May, one thousand eight hundred, for and during the term of eighteen years, for the yearly rent of one hundred and eighteen dollars and seventy-five cents, making twenty-five dollars per acre per annum, of which term nearly three years are unexpired, as in said petition is stated; that three roods and thirty-five perches, other parcels of the said premises, were leased to the said Robert Lenox by the said petitioner, as attorney to the trustees of the said premises, named in the will of Mary Clarke in the said petition and said first mentioned act named, as in and by the said petition is stated, from the first day of August, one thousand eight hundred and four, for and during the term of twenty-one years, at the yearly rent of forty-three dollars and seventy cents, being at the rate of forty-five dollars per acre per annum, of which term upwards of ten years are unexpired, as in the said petition is stated; that ten acres one rood and one perch, other parcel of the said premises, were leased by the said petitioner, as attorney as aforesaid, to Michael Hogan, from the first day of August, one thousand eight hundred and four, for and during the term of twenty-one years, at the yearly rent of four hundred and sixty-one dollars and fifty-four cents, of which said term upwards of ten years are still unexpired, as in said petition is stated. All which satisfactorily appears from an examination by me made of the respective leases for the several above mentioned parcels of the aforesaid premises at Greenwich. And I do further report, that the residue of the said premises at Greenwich, constituting nearly the eastern moiety thereof, to be divided by the line, in that behalf mentioned in the said petition, and comprising about twenty-four acres of land, were leased by the said petitioner, as attorney as aforesaid, to the Manhattan Company, in the city of New York, from the fifteenth day of July, one thousand eight hundred and five, for and during the term of twenty-one years, of which said term eleven years, or thereabouts, are still unexpired, for the purpose of securing to the said company the payment of the sum of four thousand four hundred dollars borrowed of them by the said petitioner, with interest, as appears from the examination of the said lease made by me, part of which said leasehold premises are underlet by the said lessees thereof at the yearly rent of two hundred dollars, as appears from the examination of Henry Remsen, the president of the said company, and which said debt still remains due and unpaid, as also appears by the said examination by me taken in the premises. And I do further report, that the lot on Broadway, in the Fifth ward of

the city of New York, mentioned in the said petition, were leased by the said petitioner, as attorney as aforesaid, to George Sinclair, in the said petition named, for and during the term of twenty-one years, from the first day of May, one thousand eight hundred and thirteen, at the yearly rent of four hundred and fifty dollars, as in said petition is stated, of which said term nearly nineteen years are unexpired, as appears by an examination of the said lease. And I do further report, that Henry Remsen, president of the Manhattan Company above mentioned, to which said company nearly the whole of the eastern moiety of the said premises at Greenwich was leased as aforesaid, upon his examination before me, stated that the said company of which he is president are willing, and will consent, as in the said petition is set forth, that the said leasehold premises should be sold free and discharged from the said lease thereon, and unencumbered thereby; so however, that and upon condition that the aforementioned debt of the petitioner to the said company, with the interest due thereon, be first paid and satisfactorily secured to be paid, to the said company by and out of the proceeds of such sale, and that the proper directions be given for that purpose in the order to be made by the court in the premises. And I do further report, that the said petitioner is indebted to divers persons in large and considerable amounts; that I have examined his several creditors as to their respective debts, and as far as proof was attainable from his said creditors, it appears that the sums by him borrowed, and the debts by him contracted, with the exception of what constitutes part of the said debt due to the Manhattan Company aforesaid, were appropriated to and incurred for the maintenance of his family, as in said petition is set forth; and when such proof was not to be procured, I have taken the deposition of the said petitioner as to the application of the moneys so borrowed, from which it appears that all such moneys, except as aforesaid, were applied as above stated. And I do further report, that I find the said petitioner indebted unto Henry Simmons, on bonds and notes, in the sum of one thousand three hundred dollars and upwards; unto James Davidson, on bond, in the sum of one thousand dollars and upwards; unto James Oakley, on book account, in the sum of one hundred and seventy dollars and upwards; unto Robert Stuart, on book account, in the sum of one hundred and thirty-five dollars, or thereabouts; unto John Wallis, for money lent and costs of suit at sundry times, in the sum of five hundred and twenty dollars and upwards; unto George Sinclair, on note, in the sum of one hundred and seventy dollars and upwards; unto Tenbroeck, on note, in the sum of one hundred and seventy dollars and upwards; unto Frederick Garner, in the sum of five hundred and twenty dollars and upwards, on bond and book account; unto the Manhattan Bank, on note, in the sum of three hundred dollars and upwards; unto Richard Despard, in the sum of three hundred and sixty dollars and upwards; unto Samuel W. Moore, in the sum of seventy dollars, on book account; and to divers other persons, as appears from the affidavit of the said petitioner, no other proof being produced thereof, in the sum of seven hundred dollars and upwards; all which

several sums in the whole amount to five thousand four hundred dollars and upwards. And I do further report, that it appears from the deposition of Samuel W. Moore that the said petitioner was married in the year one thousand eight hundred and two, that he has a large and increasing family, consisting of a wife and six children, the eldest of whom is between eleven and twelve years of age, and the youngest an infant under the age of one year; that the said petitioner is engaged in no profession or occupation, and that he is greatly embarrassed by the debts aforesaid, and the heavy expenses incurred for the maintenance of his family and the education of his children. And I do further report, that it satisfactorily appears to me that the rents and profits of the said house and lot fronting on Broadway aforesaid, and the said premises at Greenwich aforesaid, are not, and from the local situation and state of improvement thereof, and of the said premises at Greenwich, even if unincumbered by the present leases thereof, could not be made adequate or sufficient for the support of the said petitioner and his family, and the education of his children, even if the whole thereof could be applied thereto; and that the same, after paying thereout the interest of the aforesaid debts of the petitioner, would be insufficient for the reasonable and proper support of the petitioner and his family according to their situation in life, and would admit of no provision or allowance for the education of the children of the petitioner.

All which is respectfully submitted.

THEOD. V. W. VARICK,
Master in chancery.

(Filed July 3d, 1815.)

Order of the chancellor, July 3, 1815.

At a court of chancery, held for the State of New York, at the city of New York, on the third day of July, in the year of our Lord one thousand eight hundred and fifteen; present, the honorable James Kent, esq., chancellor. In the matter of the petition of Thomas B. Clarke, under the acts of the legislature therein mentioned.

The petitioner having presented his petition to the chancellor, in substance, setting forth, among other things, the devise of a certain house and lot of land in the Fifth ward of the city of New York, and certain land and premises in the Ninth ward of the said city, in the said petition more particularly mentioned, by Mary Clarke, therein mentioned, by her last will and testament, to certain trustees therein named, upon trust, to receive the rents and profits thereof, and pay the same to the petitioner, during his natural life, and from and after his decease to convey the said premises to his lawful issue, living at his death, in fee; and if he, the petitioner, should not leave any lawful issue at the time of his death, then to convey the same to Clement C. Moore, in the said will named, and his heirs, or to such person, in fee, as he might by will appoint, in case of his death prior to that of the petitioner; the release and conveyance, by the said Clement C. Moore, of all his estate, right and interest,

claim and demand, in and to the said devised premises, to the petitioner, and the parts and provisions of, and in the act entitled an act for the relief of Thomas B. Clarke, and an act supplementary thereto, in the said petition in substance recited, by the first of which acts, viz., the act entitled an act for the relief of Thomas B. Clarke, passed on the application of the petitioner, and with the consent of the trustees in the will aforesaid named, and of the said Clement C. Moore, before the said release and conveyance, by the said Clement C. Moore, of his estate and interest in the said devised premises, to the petitioner, the said trustees, in the will aforesaid named, were with their assent discharged from the said trust, and an authority given to this court to constitute and appoint one or more trustees in their place and stead, on the application of the petitioner, to execute and perform the several trusts and duties in the said will, and in that act, expressed and contained, and in and by which said act the trustees to be appointed under the authority thereof, or a major part of them, were directed to divide the said premises at Greenwich, in the Ninth ward of the city of New York, into two equal parts, one moiety thereof to remain in trust, and the remaining moiety to be sub-divided into suitable lots for the advantageous sale thereof, and the same, when so sub-divided, and also the said house and lot in the Fifth ward of the city of New York, to be sold and disposed of, and conveyances executed and given for the same to the purchasers thereof, and the nett proceeds thence arising to be put out and invested as authorized by the said act, and a given part of the interest and income of the said proceeds to be annually, in the first place, set apart, reserved, and invested during the natural life of the petitioner, to create an accumulating fund, for the benefit of those in remainder, being the lawful issue of the petitioner, living at the time of his death; or in default of such issue to the said Clement C. Moore, and the residue of the said interest, for his use and benefit, and the support of his family, and education of his children, and the principal of the said proceeds to be held and disposed of by the trustees according to the trusts of the will aforesaid in that behalf, and in and by which said supplemental act, passed subsequently to the release and conveyance of the said Clement C. Moore of his estate and interest in and to the said premises to the petitioner, all the beneficial interest and estate of the said Clement C. Moore, and those under him, arising or to arise by the said first mentioned act, or the said will mentioned therein, so as vested in the petitioner, his heirs and assigns; and by which said supplemental act, the parts and provisions therein specified of the first mentioned act were repealed, and he the petitioner was authorized and empowered to execute and perform every act, matter, and thing, in relation to the real estate mentioned in the said original or first mentioned act, in like manner and with like effect that the trustees duly appointed under the said act might have done, and to apply the whole of the interest and income of the said property to the maintenance of his family, and the education of his children; but it was further provided and enacted, that no sale of any part of the said estate should be made by the petitioner, until he should have procured the assent of the chancellor of this State to such

sale, who should, at the time of giving such assent, also direct the mode in which the proceeds of such sale, or so much thereof as he should think proper, should be vested in the petitioner as trustee; and the said petitioner, further setting forth in and by his said petition, that he has a large and expensive family, consisting besides himself of a wife and six children, the oldest between eleven and twelve years of age, and the youngest under one year, that the rents and profits and income of the said trust premises are the sole resource and dependence of him, the petitioner, for the maintenance and support of himself and his family, and the education of his children, several of whom are of ages that require a considerable annual expenditure therein; that the said trust premises, are under the leases, on the several parts and parcels thereof, in the said petition mentioned, and that the rents, profits, and income thereof are adequate to the purpose aforesaid, and have been inadequate thereto ever since the marriage and settlement in life of him, the petitioner; and that to supply the deficiency which has been continually increasing, and provide and procure the necessary means and funds for the support of himself and his family, he has been reduced to the necessity of contracting and incurring debts, and that for those purposes, and the discharge of other demands against him, he borrowed of the President and Directors of the Manhattan Company the sum of four thousand and four hundred dollars, in the year one thousand eight hundred and five, and has subquently contracted other debts, by purchases on credit of articles of indispensable necessity for himself and his family, and by borrowing moneys to be applied, and which he has applied, to the same purpose; and that his own necessities, and the interest and welfare of his family, require that sale should be made of what was authorized and directed by the herein first mentioned act to be sold of the said trust premises, and so much of the proceeds as might be necessary applied to the payment of the said debts of the petitioner, and the residue vested in him as trustee, under the supplemental act aforesaid, for the purposes therein mentioned; and that he, the petitioner, expected to be able to obtain the consent of the lessees of nearly the whole of the eastern moiety of the said premises at Greenwich, to be divided by the line in the said petition mentioned and described, to the sale thereof, free and discharged from the lease thereof, and praying the chancellor to give his assent to, and authorize the sale by the petitioner of the said eastern moiety of the said premises at Greenwich, or such other moiety thereof as the chancellor might be pleased to designate and direct, and also of the said house and lot in the said Fifth ward of the city of New York, for the objects and purposes in the said petition mentioned, and by the acts aforesaid authorized and contemplated, and to give such directions for, and touching the said sale, as he might deem meet and proper; and further praying the chancellor to authorize, order, and direct, that so much of the nett proceeds of such sales as might be necessary for the purpose, should be appropriated and applied to the payment and discharge of the said debts so contracted and incurred by him, the petitioner, for the purposes aforesaid, and the residue thereof, vested in the

name of him, the petitioner, as trustee as aforesaid, in such mode as the chancellor should direct, in and upon some good productive stocks or funds of a permanent nature, or on interest upon real security, or otherwise as might be directed by the chancellor; and it having been referred by this court, by an order made in this matter on the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and fifteen, to one of the masters of this court, to examine into the allegations and matters in the said petition set forth and contained, and to report thereon; and Theodorus V. W. Varick, esquire, one of the masters of this court, having in pursuance of the said order of reference made a report in the premises to this court, whereby it appears that he, the said master, has examined into the matters and allegations set forth in the said petition, as he was directed by the said order to do, and found the same to be true, and that the petitioner is indebted, over and above the said debt of four thousand four hundred dollars to the Manhattan Company aforesaid, to the amount of five thousand four hundred dollars and upwards, and that he is not engaged in any profession or occupation, and is greatly embarrassed by his said debts; and further, that the said trust premises are under the several leases thereof in the said report particularly specified; and that it satisfactorily appeared to him, the said master, that the rents and profits of the said trust estate are not, and from the local situation and state of improvement thereof, and of the said premises at Greenwich in particular, even if unincumbered by the present leases thereof, would not be made, adequate or sufficient for the support of the petitioner and his family, and the education of his children, even if the whole of the said rents and profits could be applied thereto, and that the same, after paying thereout the interest of the said debts of the petitioner, would be insufficient for the reasonable and proper support of the petitioner and his family, according to their situation in life, and would admit of no provision or allowance for the education of the children of him, the petitioner; and it further appearing by the said report, that nearly the whole of the said eastern moiety of the said premises at Greenwich, in the Ninth ward of the city of New York, to be divided by the line in that behalf mentioned in the said petition, is included in a lease by way of mortgage executed by the petitioner, as attorney for the trustees, in the will aforesaid named, of and upon the premises described, to the President and Directors of the Manhattan Company aforesaid, for the term of twenty-one years, from the fifteenth day of July, one thousand eight hundred and five, for the purpose of securing to the said company the payment of the aforesaid debt or sum of four thousand four hundred dollars, borrowed of them by the petitioner aforesaid, with interest for the same; and that the said President and Directors of the said company are willing, and will consent, that the said leasehold premises be sold free and discharged from their said lease thereof, and unincumbered thereby, on condition that said debt of the petitioner, to the said company, with the interest thereof, be first paid, or satisfactorily secured to the said company, by and out of the said proceeds of such sale, and that the proper directions be given for that purpose in the order to be made by the

court in the premises, which report is filed ; therefore, on motion of Mr. S. Jones, junior, of counsel for the petitioner, it is ordered that the assent of the chancellor be and hereby is given to the sale, by the petitioner, of the said house and lot in the Fifth ward of the city of New York, and of the eastern moiety or half part of the said premises at Greenwich, in the Ninth ward of the city of New York, to be divided by the line in the manner for that purpose mentioned in the said petition; and the petitioner is authorized and directed to sell and dispose of the same, under and according to the aforesaid acts of the legislature in that behalf, the said sales to be made under the direction of one of the masters of this court, and the petitioner to proceed in making the sales and conveyances of the said premises, so to be sold, in the manner for that purpose in and by the said acts prescribed and directed. And it is further ordered, that the purchase moneys for the said premises so to be sold be paid by the purchasers to the said master, to be disposed of by him as hereinafter directed. And it is further ordered and directed, and his honor the chancellor hereby doth authorize, order, and direct, that so much of the nett proceeds, to arise from such sales, as may be necessary for the purpose, be applied, under the direction of one of the masters of this court, in and for the payment and discharge of the debts now owing by the petitioner, and to be contracted for the necessary purposes of his family, to be proved before the said master; and the costs, charges, and expenses of the petitioner, on his petition in this matter, and the proceedings had, and to be hereafter had, under or in consequence thereof; but so, however, and it is further ordered and directed, that the nett proceeds of the said eastern moiety of the said premises at Greenwich aforesaid, or so much thereof as shall be necessary for that purpose, be applied in the first place, and before and in preference to any other appropriation or application thereof, to pay and satisfy to the President and Directors of the Manhattan Company aforesaid, the aforesaid debt or sum of four thousand four hundred dollars, with the interest thereof up to the time of such payment, or such part and balance of the said debt, and interest, as shall not have been otherwise paid or satisfied. And it is further ordered and directed, and his honor the chancellor hereby doth further order and direct, that the residue of the said nett moneys, and proceeds arising from such said sales, after the said debts, costs, charges, and expenses shall be discharged and paid by and out of the same, be placed out at interest, on real security, in the city of New York, in the name of the petitioner as trustee, under the direction of one of the masters of this court, upon the following trusts, to be expressed upon the face and in the body of the said securities respectively, whereon the same shall be so placed, that is to say, upon trust, that the interest and income thereof, or so much of the same as may be required for that purpose, be applied, from time to time, in and for the suitable and proper maintenance and support of the petitioner, and his wife and children, already born and to be hereafter born, according to their situation in life, and for the suitable education of the said children ; and upon further trust, that the principal sum or sums, with the securities whereon the

same may be vested or placed, and may stand, shall be held, and he the petitioner as trustee, stand and be possessed thereof in trust, for the benefit of the lawful issue of the petitioner who shall be living at the death of him the petitioner, according to the trusts, upon which the unsold moiety of the said premises at Greenwich aforesaid, in the aforesaid acts of the legislature mentioned, are, or shall be held; and so, and in such manner, that the said interest and income of the said trust moneys, funds and securities, or so much thereof as may be requisite thereto, shall be appropriated, applied, and secured in the first instance, and exclusively to the suitable maintenance of the family of the petitioner, according to their situation in life, and the suitable education of his children, and shall not be subject or liable to or for the engagements, debts, or control of the petitioner, or for any other purpose whatsoever, than the said purposes hereby designated and authorized; provided that any surplus of the said interest and income, that may be left and remain after the said objects and purposes, hereby designated as aforesaid, first, fully, and liberally fulfilled and accomplished, according to the true meaning hereof, shall be for the use and at the disposal of him the petitioner. And it is further ordered that the master, under whose direction the said sales should be made, and the debts paid, and surplus proceeds placed out as aforesaid, report to this court the proceedings that may be had in the premises, and the securities that may be taken therein, pursuant to this order, with all convenient speed; and that all and every person or persons who are, or is, or may become interested therein, have liberty to apply to this court, at any time or times hereafter, for any further or other orders or directions in or touching the premises.

Petition of Thomas B. Clarke.

March 12, 1846.

To the honorable the legislature of the State of New York. The memorial and petition of Thomas B. Clarke, of the city of New York, respectfully showeth:

That his honor, the Chancellor, under the act "for the relief of Thomas B. Clarke," passed April 1, 1814, and the act "supplemental to the act for the relief of Thomas B. Clarke," passed March 24, 1815, did order and direct that the said Thomas B. Clarke should sell the eastern moiety or half part of the premises in the said act and order mentioned.

And your petitioner further shows, that owing to the scarcity of money, and the present low price of property, no sale can be made without a great sacrifice.

Your petitioner therefore prays, that he may be allowed to mortgage such part of the property, in the said act mentioned, as the chancellor may appoint, and for the purposes mentioned in the said acts and order; and that your petitioner be allowed to bring in a bill for that purpose. And he will ever pray, &c.*

*Not signed.

Assembly chamber, clerk's office, Albany, December 5th, 1844.

I hereby certify, that the foregoing is a true copy of an original petition, presented to the Assembly of the State of New York, and referred to Messrs. Lynch, Laight, and Joseph Smith; that said petition has no signature, and that the same is on file among the legislative papers belonging to said assembly remaining in this office.

I further certify, that I have made diligent search among the legislative papers, belonging to said assembly, for the years 1814, 1815, and 1816, and I cannot find among said papers any other petition or paper relating to any application or petition of Thomas B. Clarke, nor do I find any evidence among said papers, or remaining in this office, that any testimony was taken, or produced before the said assembly, touching any application or petition of Thomas B. Clarke, except what appears in certain statutes relating thereto, printed in the session laws of this State.

JAS. R. ROSE,
Clerk of the Assembly of the State of New York.

Extract from Assembly journal. March 12, 1816.

Mr. Lynch, from the select committee, to whom was referred the petition of Thomas B. Clarke, reported: That the petitioner was authorized by a law of the last session to sell certain real estate, under the direction of the chancellor; that, from the scarcity of money, he finds a difficulty in making a sale of said property without a sacrifice, and now prays to be permitted to mortgage said estate, subject to the same restrictions, and under the direction of the court of chancery, in like manner as is contained in said act. The committee are of opinion that the prayer of the said petitioner is reasonable and ought to be granted; they have prepared a bill for that purpose, and directed their chairman to ask for leave to bring in the same.

Act of March 29, 1816.

An act farther supplemental to an act entitled "an act for the relief of Thomas B. Clarke."

Be it enacted by the people of the State of New York, represented in Senate and Assembly, that the said Thomas B. Clarke be, and he is hereby authorized, under the order heretofore granted by the chancellor, or under any subsequent order, either to mortgage or to sell the premises which the chancellor has permitted, or hereafter may permit him to sell, as trustee, under the will of Mary Clarke, and to apply the money, so raised by mortgage or sale, to the purposes required, or to be required, by the chancellor, under the acts heretofore passed for the relief of the said Thomas B. Clarke.

Petition to the chancellor.

November 1st, as of May 30th, 1816.

To the honorable James Kent, chancellor of the State of New York.

The petition of Thomas B. Clarke, of the city of New York, respectfully showeth:

That your petitioner, some time on or about the twenty-eighth day

of June, in the year of our Lord one thousand eight hundred and fifteen, presented his petition to your honor, in substance setting forth, among other things, the devise of a certain house and lot of land in the Fifth ward of the city of New York, and certain land and premises in the Ninth ward of the said city, in the said petition more particularly mentioned, by Mary Clarke, therein mentioned, by her last will and testament to certain trustees, therein named, upon trust to receive the rents and profits thereof, and pay the same to your petitioner during his natural life, and from and after his decease to convey the said premises to his lawful issue living at his death, in fee; and if your said petitioner should not have any lawful issue at the time of his death, then to convey the same to Clement C. Moore, in the said will named, and his heirs, or to such person, in fee, as he might by will appoint, in case of his death prior to that of your petitioner; and further setting forth in substance, the release and conveyance by the said Clement C. Moore of all his estate, right and interest, claim and demand, in and to the said demised premises, to your petitioner, and the parts and provisions of and in the act, entitled "an act for the relief of Thomas B. Clarke," and an act supplementary thereto, in the said petition in substance recited, by the first of which acts, namely, the act entitled "an act for the relief of Thomas B. Clarke," passed on the application of your petitioner, and with the consent of the trustees in the will aforesaid named, and of the said Clement C. Moore, before the said release and conveyance by the said Clement C. Moore of his estate and interest in the said devised premises to your petitioner, the said trustees in the will aforesaid named, were, with their assent, discharged from the said trust, and an authority given to the chancellor to constitute and appoint one or more trustees in their place and stead, on the application of your petitioner, to execute and perform the several trusts and duties in the said will, and in that act expressed and contained; and in and by which said act, the trustees to be appointed under the authority thereof, or a major part of them, were directed to divide the said premises at Greenwich, in the Ninth ward of the city of New York, into two equal parts, one moiety thereof to remain in trust, and the remaining moiety to be subdivided into suitable lots for the advantageous sale thereof; and the same, when so divided, and also the said house and lot in the Fifth ward of the city of New York, to be sold and disposed of, and conveyances executed and given for the same to the purchasers thereof; and the nett proceeds thence arising to be put out and invested as authorized by the said act; and a given part of the interest and income of the said proceeds to be annually, in the first place, set apart, reserved, and invested during the natural life of your petitioner, to create an accumulating fund for the benefit of those in remainder, being the lawful issue of your petitioner, or living at the time of his death, or in default of such issue, the said Clement C. Moore; and the residue of the said interest and income to be paid to your petitioner for his use and benefit, and the support of his family, and education of his children; and the principal of the said proceeds to be held and disposed of by the said trustees according to the

trusts of the will aforesaid in that behalf, and in and by which said supplemental act, passed subsequently to the release and conveyance, by the said Clement C. Moore of his estate and interest in and to the said premises to your petitioner, all the beneficial interest and estate of the said Clement C. Moore, and those under him, arising, or to arise by the said first mentioned act, or the said will mentioned therein, was vested in your petitioner, his heirs and assigns; and by which said supplemental act, the parts and provisions therein specified of the said first mentioned act were repealed, and your petitioner was authorized and empowered to execute and perform every act, matter, and thing in relation to the real estate mentioned in the said original or first mentioned act, in like manner, and with the like effect, that trustees duly appointed under the said act might have done, and to apply the whole of the interest and income of the said property to the maintenance of his family, and the education of his children; but it was further provided and enacted, that no sale of any part of the said estate should be made by your petitioner, until he should have procured the assent of the Chancellor of this State to such sale, who should, at the time of giving such assent, also direct the mode in which the proceeds of such sale, or so much thereof as he should think proper, should be vested in the petitioner as trustee; and your said petitioner further setting forth in and by his said petition, in substance, among other things, that he had a large and expensive family; that the rents and profits and income of the said trust premises were the sole resource and dependence of your petitioner for the maintenance and support of himself and his family, and the education of his children, several of whom were of ages that required a considerable annual expenditure therein; that the said trust premises were under leases, on the several parts and parcels thereof in the said petition mentioned, and that the rents, profits, and income thereof were inadequate to the purposes aforesaid, and had been inadequate thereto ever since the marriage and settlement in life of your petitioner, and that to supply the deficiency, which had been continually increasing, and provide and procure the necessary means and funds for the support of himself and his family, he had been reduced to the necessity of contracting and incurring debts; and that for those purposes, and the discharge of other demands against him, he borrowed of the President and Directors of the Manhattan Company the sum of four thousand four hundred dollars, in the year one thousand eight hundred and five, and had subsequently contracted other debts by purchases on credit of articles of indispensable necessity for himself and his family, and by borrowing moneys to be applied, and which he had applied, to the same purposes; and that his own necessities and the interest and welfare of his family, required that sale should be made of what was authorized and directed by the said first mentioned act to be sold of the said trust premises, and so much of the proceeds as might be necessary applied to the payment of the said debts of your petitioner, and the residue vested in him, as trustee, under the supplemental act aforesaid, for the purposes therein mentioned; and that your petitioner expected to be able to obtain the consent of the lessees of nearly the

whole of the eastern moiety of the said premises at Greenwich to be divided by the line in the said petition mentioned and described, to the sale thereof, free and discharged from the leases thereof; wherefore your petitioner, in and by his said petition, did pray your honor, the said chancellor of the State of New York, to give his assent to and authorize the sale by your petitioner of the said eastern moiety of the said premises at Greenwich, or such other moiety thereof as the chancellor might be pleased to designate and direct, and also of the said house and lot in the said Fifth ward of the city of New York, for the objects and purposes in the said petition mentioned, and by the acts aforesaid authorized and contemplated, and to give such directions for and touching the said sale as he might deem meet and proper; and did further pray the said chancellor to authorize, order, and direct, that so much of the nett proceeds of such sales as might be necessary for the purpose, should be appropriated and applied to the payment and discharge of the said debts so contracted and incurred by your petitioner for the purposes aforesaid, and the residue thereof vested in the name of your petitioner, as trustee as aforesaid, in such mode as the chancellor should direct, in and upon some good and productive stocks or funds of a permanent nature, or on interest upon real security, or otherwise as might be directed by the chancellor, as by the said petition, now on file as of record in the proper office of the said court of chancery for that purpose, reference being had to the same, fully and at large may appear, and to which, for greater certainty in the premises, your petitioner prays leave to refer himself. And your petitioner further showeth, that it having, on presenting the said petition, been referred by this court, by an order made in this matter on or about the aforesaid twenty-eighth day of June, in the year of our Lord one thousand eight hundred and fifteen, to one of the masters of this court, to examine into the allegations and matters in the said petition set forth and contained, and to report thereon with all convenient speed; and Theodorus V. W. Varick, esquire, then and yet one of the masters of the said court of chancery, having taken upon him the charge of the said reference to the said master, did, in pursuance of the said order, proceed to take the examination which he was thereby directed to take in the premises, and afterwards made his report thereon, bearing date some time on or about the thirtieth day of June, in the said last mentioned year, whereby it was stated and did appear, that the said master had examined into the matters and allegations set forth in the said petition, as he was directed by the said order to do, and found the same to be true, and that your petitioner was indebted, over and above the said debt of four thousand four hundred dollars to the Manhattan Company aforesaid, to the amount of five thousand four hundred dollars and upwards; and that he, your petitioner, was not engaged in any profession or occupation, and was greatly embarrassed by his said debts; and further, that the said trust premises were under the several leases thereof, in the said report particularly specified, and in and by which said report the said master did further report and state, that it satisfactorily appeared to him, the said master, that the rents and profits of the said trust estate were

not, and from the local situation and state of improvement thereof, and of the said premises at Greenwich in particular, even if unincumbered by the leases thereof, could not be made, adequate or sufficient for the support of the petitioner and his family, and the education of his children, even if the whole of the said rents and profits could be applied thereto; and that the same, after paying thereout the interest of the said debts of your petitioner, would be insufficient for the reasonable and proper support of your petitioner and his family, according to their situation in life, and would admit of no provision or allowance for the education of the children of your petitioner; and by which said report it further appeared, and was stated, that nearly the whole of the said eastern moiety of the said premises at Greenwich, in the Ninth ward of the city of New York, to be divided by the line in that behalf mentioned in the said petition, was included in the lease by way of mortgage, executed by your petitioner as attorney for the trustees in the will aforesaid named, of and upon the premises therein described, to the President and Directors of the Manhattan Company aforesaid, for the term of twenty-one years from the fifteenth day of July, eighteen hundred and five, for the purpose of securing to the said company the payment of the debt or sum of money aforesaid, borrowed of them by your petitioner as aforesaid, with interest for the same; and that the said President and Directors of the said company were willing, and would consent that the premises should be sold free and discharged from the said lease thereof, and unincumbered thereby, on condition that the debts of your petitioner to the company, with the interest thereof, should be first paid, or satisfactorily secured to the said company, by and out of the said proceeds of such sale, and that the proper directions should be given for that purpose in the order to be made by the court in the premises as by the said report, which was filed, and now remains on file, as of record in the proper office of this honorable court in that behalf, reference being had thereto, fully and at large may appear, and to which your petitioner, for greater certainty in the premises, prays leave to refer himself. And your petitioner further showeth, that upon the coming in of the said report, that is to say, at a court of chancery held for the State of New York at the city hall of the city of New York, on the third day of July, in the said year of our Lord one thousand eight hundred and fifteen, the said report being read and filed, it was, on the motion of the counsel for your petitioner, among other things, ordered that the assent of the chancellor be, and thereby was given, to the sale by your petitioner of the said house and lot in the Fifth ward of the city of New York, and of the eastern moiety or half part of the said premises at Greenwich, in the Ninth ward of the city of New York, to be divided by the line and in the manner for that purpose mentioned in the said petition; and your petitioner was thereby authorized and directed to sell and dispose of the same, under and according to the aforesaid acts of the legislature in that behalf; the said sales to be made under the direction of one of the masters of this court, and your petitioner to proceed in making the said sales and conveyances of the said premises to be sold, in the manner for that purpose

in and by the said acts prescribed and directed ; and it was further ordered that the purchase moneys for the said premises so to be sold be paid by the purchasers to the said master, to be disposed of by him as in the said last mentioned order after directed; and in and by the same last mentioned order, it was also further ordered and directed, and his honor the chancellor did thereby authorize, order, and direct, that so much of the nett proceeds to arise from such sales, as might be necessary for the purpose, should be applied, under the direction of one of the masters of this court, in and for the payment and discharge of the debts then owing by your petitioner, and to be contracted for the necessary purposes of his family, to be proved before the said master, and the costs, charges, and expenses of your petitioner, on his aforesaid petition, in the matter aforesaid, and the proceedings had, and to be thereafter had, under or in consequence thereof ; but so, however, and it was thereby further ordered and directed, that the nett proceeds of the said eastern moiety of the said premises at Greenwich aforesaid, or so much thereof as should be necessary for that purpose, should be applied in the first place, and before, and in preference to any other appropriation or application thereof, to pay and satisfy to the President and Directors of the Manhattan Company aforesaid, the aforesaid debt or sum of four thousand four hundred dollars, with the interest up to the time of such payment, or such part and balance of the said debt and interest as should not have been otherwise paid or satisfied; with further orders and directions in the same last mentioned order contained, as to the residue and surplusage of the debt, moneys, and proceeds, arising from the said sales, after the said debts, costs, and charges, and expenses discharged and paid by and out of the same, and for placing out, ordering, and disposing thereof, and of the interest and income thereof, and with a further order therein contained for the master, under whose directions the said sales should be made, and the debts paid, and the surplus proceeds placed out as thereby directed, to report his proceedings in the premises ; and that all and every person or persons who were, or was, or might become interested therein, should have liberty to apply to this court at any time or times thereafter, for any further or other orders or directions, in or touching the premises, as by the said last mentioned order in the minutes of the said court, in the proper office for that purpose remaining, or a certified copy thereof, in your petitioner's possession, reference being thereunto had fully, and at large may appear, and to which your petitioner, for greater certainty in the premises, begs leave to refer himself. And your petitioner further showeth, that the said eastern moiety or half part of the said premises at Greenwich were subdivided into suitable lots for the advantageous sale thereof, which lots being two hundred and forty full city lots, besides a number of gore lots, were offered for sale under the direction of the said Theodore V. W. Varick, the aforesaid master of this court, at the Tontine coffee-house, in the city of New York, when a few of the said lots were sold; but that the lots which were so sold were struck off at such low prices, that your petitioner deemed it expedient to stop the sale thereof, and the residue of the said lots, though tried at several different times,

could not be sold unless at a sacrifice of nearly one-half their true and full values. And your petitioner further showeth, that being unwilling to submit to so ruinous a sacrifice by the sale of the said lots, and having assurances of a loan to answer his exigencies on the security of the mortgage of the said lots, in case an effectual mortgage of the fee simple thereof could be executed and given to the lenders, your petitioner proposed to apply, and was about applying, to your honor, so to modify the said last mentioned order of this court as to assent to and authorize the mortgage of the said lots, instead of the sale of the same ; but doubts being suggested of the power of your honor, under the acts aforesaid, to authorize the mortgage of the said premises for the purpose intended, your petitioner, in order to remove all doubts on the subject, made application to the legislature of the State of New York at their last session, for an act to authorize either the mortgage or sale of the said premises ; and an act was, on or about the twenty-ninth day of March, eighteen hundred and sixteen, passed by the said legislature, entitled " An act further supplemental to an act entitled ' An act for the relief of Thomas B. Clarke,' " whereby it is in substance enacted, that your petitioner be, and he is thereby authorized, under the order heretofore granted by the chancellor, or under any subsequent order, either to mortgage or to sell the premises, which the chancellor has permitted, or hereafter may permit him to sell, as trustee under the will of Mary Clarke, and to apply the moneys, so raised by mortgage or sale, to the purposes required, or to be required by the chancellor, under the acts heretofore passed for the relief of the said Thomas B. Clarke, as by the said act, reference being had to the same, fully and at large may appear; and to which your petitioner, for greater certainty, prays leave to refer himself. And your petitioner further showeth, that his debts are daily increasing, both by the accumulation of interest, and by new loans and purchases for the current expenses of himself and family. And your petitioner further showeth, that the President and Directors of the Manhattan Company aforesaid offer to advance to your petitioner, or for his use, such sum as will be sufficient to answer all the said purposes of your petitioner, and to take a mortgage upon the said lots at Greenwich that remain unsold, as their security for the re-payment of the said advances, with interest, and of the debt which your petitioner already owes them, as hereinbefore mentioned, if your honor shall see fit to give your assent to such mortgage; wherefore your petitioner respectfully prays, that your honor will be pleased to authorize, assent to, and direct your petitioner to execute and give to the said President and Directors of the Manhattan Company, or such other body corporate, or person or persons, as shall be willing and agree to make the necessary advance to your petitioner in the premises, a mortgage in fee of and upon the lots remaining unsold of the aforesaid eastern moiety or half part of the premises aforesaid at Greenwich, in the Ninth ward of the city of New York aforesaid, or any part thereof, for securing to the said President and Directors of the Manhattan Company, or other lenders, the sum or sums of money which may be advanced by them to your petitioner in the premises, together with all such sum or

sums of money as may be already owing to them by your petitioner, with lawful interest for the same; and that your honor will be pleased to give such directions for and touching the said sales thereof, as may appear to your honor to be meet and proper, and that your honor will be pleased to authorize, order, and direct, at the same time, that the said advances and moneys to be raised by and upon such said mortgage or mortgages, or so much thereof as may be necessary for the purpose, be appropriated and applied in and for the payment and discharge of the debts of your petitioner, so contracted by him in the premises as aforesaid, with such further advances as the exigencies of himself and his family may be found to require, together with the costs, charges, and expenses of your petitioner, in his application to this honorable court on the subject or otherwise, in and about the premises; and your petitioner will ever pray, &c. T. B. CLARKE.

Sworn to before me this 27th May, 1816.

GIDEON HAWLEY, *Master in Chancery.*

J. V. N. YATES, *Counsel for the petitioner.*

Filed 1st of November, 1816, as of the 30th May, 1816.

Report of Master.

In chancery. In the matter of the petition of Thomas B. Clarke.

STATE OF NEW YORK, *ss:*

I, the subscriber, one of the masters of this honorable court, do respectfully report, that in pursuance of an order of this court, made in the above matter, and bearing date the third day of July, in the year one thousand eight hundred and fifteen, the lands and premises at Greenwich, in the Ninth ward of the city of New York, mentioned in the said petition of the said Thomas B. Clarke, were regularly advertised for sale at public auction, at the Tontine coffee-house, under the direction of the subscriber, and that on the 8th day of August, 1815, the same were offered for sale at the place aforesaid, but that in consequence of there being no bidders, the sale thereof was postponed. And I do further report, that on the 8th day of January, 1816, the said lands and premises were again put up for sale at the place aforesaid, where a few lots from the eastern moiety of the lands at Greenwich, mentioned in the said petition of the said Thomas B. Clarke, to wit, lots Nos. 23, 24, 25, 26, 27, 28, 29, 30, 53, and 59, being ten lots, were sold to one Samuel Norsworthy, he being the highest bidder, for the price of one hundred and twenty-five dollars per lot, which said price, in the opinion of the subscriber, was not equal to more than half the value of the said lots; wherefore, and being convinced that any further sale of the said lands and premises must be attended with a very great sacrifice of the interests of the said petitioner, the sale was by his consent and desire discontinued, since which time nothing further has been done in the premises. All which is respectfully submitted.

THEOD. V. W. VARICK,

May 23d, 1816. *Master in Chancery.*

Filed 1st November, 1816, as of the 30th May, 1816.

Order of the chancellor endorsed on petition.

May 30*th*, 1816.

On reading and filing the within petition, together with the report of Theodorus V. W. Varick, one of the masters of this court, dated May 23d, 1816, it is ordered, that the said petitioner, under the act entitled "an act further supplemental to the act entitled 'an act for the relief of Thomas B. Clarke,'" passed March 29th, 1816, be, and he is hereby authorized, so far as the assent of this court is requisite, to mortgage, instead of selling the lands he was authorized to sell, in and by an order of this court of the third day of July last; and that the moneys to be procured, and the debts to be extinguished by such mortgage or mortgages, be appropriated and adjusted in the same manner and under the same checks, and not otherwise than is prayed for in and by said order, and the said order is to apply to and govern the application of the moneys to be raised by mortgage, equally, as if the same had been raised by a sale of all or any of the lands authorized to be sold in and by the said order.

May 30*th*, 1816. J. KENT.

This order to be entered with Mr. Kip, at New York.

J. K.

Filed 1st November, 1816, as of the 30th May, 1816.

Order entered in the minutes.

May 30*th*, 1816.

At a court of chancery, held for the State of New York, at the city of Albany, on the thirtieth day of May, in the year of our Lord one thousand eight hundred and sixteen: Present, the honorable James Kent, esquire, chancellor. In the matter of the petition of Thomas B. Clarke.

An order of this court having been heretofore, at a court of chancery held for the State of New York, at the City Hall of the city of New York, on the third day of July, in the year of our Lord one thousand eight hundred and fifteen, made and entered in this cause in this matter, on the petition of the said Thomas B. Clarke; and the report of Theodorus V. W. Varick, one of the masters of this court, to whom it was referred, to examine into the allegations and matters in the said petition set forth and contained, and to report thereon, been heretofore at a court of chancery, held for the State of New York, at the City Hall in the city of New York, on the third day of July, in the year of our Lord one thousand eight hundred and fifteen, made and entered by this court in this matter, whereby it was, amongst other things therein contained, in substance ordered, that the assent of the chancellor be, and thereby was given to the sale by the petitioner of the house and lot in the Fifth ward of the city of New York, and of the certain moiety or half part of the premises at Greenwich, in the Ninth ward of the city of New York, to be divided by the line, and in the manner, for that purpose mentioned in the said petition; and the said petitioner was author-

ized and directed to sell and dispose of the same, under and according to the act of the legislature in that behalf in the said petition mentioned and in part recited, the said sales to be made under the direction of one of the masters of this court, and the petitioner to proceed in making the sales and conveyances of the said premises so to be sold in the manner for that purpose in and by the said acts prescribed and directed; and that the purchase money for the said premises so to be sold be paid by the purchasers to the said master, to be disposed of by him as thereinafter directed; and by which said order, it was further ordered and directed, and his honor the chancellor did authorize, order, and direct, that so much of the nett proceeds to arise from such sales, as might be necessary for the purpose, should be applied under the direction of one of the masters of this court in and for the payment and discharge of the debts then owing by the petitioner, and to be contracted for the necessary purposes of his family, to be proved before the said master, and the costs, charges, and expenses of the petitioner on his petition in the said matter, and the proceedings had, and to be thereafter had, under or in consequence thereof, with a proviso or condition in the said order contained, for the payment out of the said funds of a certain debt in the said order mentioned, in the first place, and before and in preference to any other application thereof, and which said order contains further directions for the investment, laying out, and disposal of the residue of the said purchase moneys, and the interest thereof for the master, under whose direction the said sale should be made, debts paid, and surplus proceeds placed out, to report his proceedings in the premises; and that all and every person or persons who were, or was, or might become interested therein, should have liberty to apply to this court at any time or times thereafter, for any further or other orders or directions in or touching the premises; and the said Thomas B. Clarke having lately, that is to say, on or about the thirtieth day of May last past, presented his petition to his honor the chancellor, setting forth, among other things, that the said eastern moiety or half part of the said premises at Greenwich were subdivided into suitable lots for the advantageous sale thereof, which lots, being two hundred and forty full city lots, besides a number of gore lots, were offered for sale under the direction of Theodorus V. W. Varick, one of the masters of this court in the said petition mentioned, at the Tontine coffee house, in the city of New York, where a few of the said lots were sold; but that the lots which were so sold were struck off at such low prices that he, the petitioner, deemed it expedient to stop the sale thereof; and that the residue of the said lots, though tried at several different times, could not be sold unless at a sacrifice of nearly one-half their true and fair value; and that being unwilling to submit to so ruinous a sacrifice by the sale of the said lots, and having assurances of a loan to answer his exigencies, on the security of a mortgage on ten lots, in case an effectual mortgage of the fee simple thereof could be given to the lenders, but doubts being suggested of the power of your honor under the said acts, in the said petition before mentioned, to authorize the mortgage of the said premises for the purposes intended,

the petitioner, to remove all doubts on the subject, made application to the legislature at their last session, for an act to authorize either the mortgage or sale of the said premises, and that an act was on or about the twenty-ninth day of March, one thousand eight hundred and sixteen, passed by the legislature, entitled as in the said petition is mentioned, whereby it is in substance enacted, that the petitioner be, and he is thereby authorized, under the aforesaid order of this court, or under any subsequent order, either to mortgage or sell the premises which the chancellor has permitted or may permit him to sell, as trustee under the will of Mary Clarke, in the said petition mentioned, and to apply the money raised by mortgage or sale to the purposes required or to be required by the chancellor, under the acts passed for the relief of the said Thomas B. Clarke; and further setting forth, that the debts of him, the petitioner, are daily increasing, both by the accumulation of interest, and new loans and purchases for the current expenses of himself and family, and that the President and Directors of the Manhattan Company offered to advance him a sufficient sum to answer his purposes, and to take a mortgage on the lots at Greenwich remaining unsold as their security for their advances and interest and the debt already owing to them by the petitioner as mentioned in his petition; and among other things praying the chancellor to authorize, assent to, and direct the petitioner to execute and give to the said President and Directors of the Manhattan Company, or such other body corporate, person or persons, as should be willing and agree to make the necessary advances to him, the petitioner, in the premises, a mortgage in fee of and upon the lots remaining unsold of the aforesaid eastern moiety or half part of the premises aforesaid, at Greenwich aforesaid, or any part thereof, for securing to the lenders the sum or sums of money which may be advanced by them to the petitioner in the premises, together with sums as might be already owing to them, with lawful interest; and to authorize and direct the moneys to be raised by such mortgage or mortgages, or so much thereof as might be necessary, to be appropriated and applied in and for the payment of the petitioner's debts, contracted in the premises as mentioned in the petition, with such further advances as the exigences of himself and family may be found to require, together with costs; which petition is filed. And on motion of Mr. Samuel Jones, jr., of counsel for the petitioner, it is ordered that the said petitioner, under the act entitled, an act further supplemental to the act entitled an act for the relief of Thomas B. Clarke, passed March the twenty-ninth, one thousand eight hundred and sixteen, be, and he is hereby authorized, so far as the assent or act of this court is requisite, to mortgage instead of selling the lands and premises he was authorized to sell in and by the aforesaid order of this court, of the date of the third day of July last, or any part or parts thereof, and for that purpose to execute and give to the President and Directors of the Manhattan Company, or other mortgagee or mortgagees, a mortgage or mortgages in fee of and upon the said lands and premises, or any part thereof remaining unsold, for securing the sum or sums of money to be advanced or lent to the petitioner, or for his use, by the President and Directors of the Manhattan Company afore-

said, or other mortgagee or mortgagees, and such debt or debts as may be already owing by him to such lender or lenders, with lawful interest therefor; and it is further ordered, that the moneys to be procured, and the debts to be extinguished by such mortgage or mortgages, be appropriated and adjusted in the same manner and under the same checks, and not otherwise, than is provided for in and by the said before mentioned order of this court; and that the said before mentioned order of this court shall apply to and govern the application of moneys to be raised by mortgage equally, as if the same had been raised by a sale of all or any of the said lands and premises, authorized in and by the said order to be sold; and further, that any party interested, or to become interested therein, have liberty to apply to this court at any time or times hereinafter, for any further or other orders and directions in or touching the premises.

Petition to the Chancellor, March 8th, 1817.

To the honorable James Kent, chancellor of the State of New York.

The petition of Thomas B. Clarke, of the city of New York, respectfully showeth:

That, notwithstanding the utmost efforts of your petitioner to relieve his circumstances under the orders heretofore made by your honor, on the third day of July, eighteen hundred and fifteen, and the thirtieth day of May, eighteen hundred and sixteen, he has been unable to effect scarcely any sales, or to raise any money on mortgage without a sacrifice of property, which he did not consider himself authorized to make, and he is again compelled to solicit the aid of this honorable court. From the order made on the third day of July, eighteen hundred and fifteen, it will appear to your honor, that nearly the whole of the eastern moiety of the Greenwich estate, which your petitioner has power to sell or mortgage, is now under lease to the Manhattan Company in this city to secure the payment of the sum of four thousand four hundred dollars, nine years of which are unexpired; that the said Manhattan Company decline to advance any more money to your petitioner, and they refuse to render their said lease on any terms short of the payment of their whole demand, whereby your petitioner is placed in a very embarrassed situation, not only without the means of support, but wholly unable to satisfy his other creditors, some of whom are persons who have voluntarily come foward to the assistance of your petitioner on the faith of his power to sell or pledge the said eastern moiety of the estate. Under these circumstances, your petitioner feels himself bound, from the sense of injustice to these creditors, and from the necessities of his family, to represent to your honor the propriety and expediency of dividing the said estate by an eastern and western, instead of a northern and southern line, and of granting to your petitioner the power to sell or mortgage the southern instead of the eastern moiety of the said estate, in addition to the lot on Broadway. By this arrangement, the northern moiety of the said estate will remain entire for the future benefit of the children of your petition-

er, there being no incumbrance upon the same affecting their interest, excepting a lease of between four or five acres thereof, to Robert Lenox, esquire, executed by the testatrix in her lifetime, and which will expire in about fifteen months. That your petitioner has sold but ten of two hundred and thirty lots, or thereabouts, which compose the eastern division of the said estate, and those ten fall within the said southern moiety. Your petitioner therefore humbly prays, that your honor will grant him permission either to sell or mortgage the southern division of the said estate, or such parts of it as may be necessary, together with the said lot in Broadway, subject to such restrictions as your honor may think fit to impose, in order that your petitioner may be able to pay and satisfy his said debts. And in case your petitioner should not be able to meet with a ready sale for the said property, that he may be allowed to convey certain lots of the said southern moiety to his creditors, in satisfaction of his said debts, at a valuation to be approved by one of the masters of this court.

And your petitioner will ever pray, &c.

T. B. CLARKE.

STATE OF NEW YORK, *ss:*

Thomas B. Clarke being duly sworn says, that the facts set forth in the above petition, to which he has subscribed *my* name are true, and further saith not.

T. B. CLARKE.

Sworn, February 11th, 1817, before me,
JAMES A. HAMILTON, *Master in Chy.*

Filed 8th March, 1817.

Order of reference.

March 8th, 1817.

At a court of chancery held for the State of New York, at the city hall in the city of New York, on the eighth day of March, in the year of our Lord one thousand eight hundred and seventeen; present, the honorable James Kent, esquire, chancellor. In the matter of the petition of Thomas B. Clarke.

On reading and filing the petition of Thomas B. Clarke, setting forth that nearly the whole of the eastern moiety of the Greenwich estate, mentioned and referred to in the orders heretofore made respecting the same, bearing date the third day of July, eighteen hundred and fifteen, and the thirtieth day of May, eighteen hundred and sixteen, and which the said petitioner was authorized to sell or to mortgage, was subject to a lease to the Manhattan Company, in the city of New York, to secure the payment to them of the sum of four thousand four hundred dollars, nine years of which lease were still unexpired; that the said Manhattan Company declined to advance any more money to the petitioner, and refused to surrender the said lease on any terms short of the actual payment of the whole demand, whereby the petitioner was placed in a very

embarrassed situation, not only without the means of support, but wholly unable to satisfy his other creditors, some of whom are persons who have voluntarily come forward to the assistance of the petitioner on the faith of his power to sell or pledge the said eastern moiety of the said estate; that he has not been able to make scarcely any sales, or to raise any money upon mortgage, without a sacrifice of property which he did not consider himself warranted to make; that the pressure of his debts, and the necessities of his family, require some measures for their relief; and representing the propriety and expediency of dividing the said estate by an eastern and western, instead of a northern and southern, line, and of granting to the said petitioner the power to sell or mortgage the southern instead of the eastern moiety of the said estate, in addition to the lot in Broadway, described in the said order of the third of July, eighteen hundred and fifteen, by which arrangement the northern moiety of the said estate would remain entire for the future benefit of his children, the same being subject to no other incumbrance affecting their interest, excepting a lease of between four and five acres thereof to Robert Lenox, esquire, executed by the testatrix in her lifetime, and which will expire in about fifteen months; that the said petitioner has sold but ten of two hundred and thirty lots, or thereabouts, which compose the said eastern division, and that those ten lots fall within the said southern moiety of the said estate; whereupon, the said petitioner prays permission either to sell or mortgage the said southern division of the said estate, or such parts of it as may be necessary, together with the said lot in Broadway, subject to such restrictions as this court may think fit to impose, in order that the petitioner may be able to pay and satisfy his said debts; and in case the petitioner should not be able to meet with a ready sale for the said property, that he might be allowed to convey certain lots of the said southern moiety to his creditors, in satisfaction of his said debts, at a valuation to be approved of by one of the masters of this court; it is thereupon, on motion of Mr. Samuel Jones, junior, solicitor for the petitioner, ordered that it be referred to one of the masters of this court to inquire whether any of the property sold or mortgaged by the said Thomas B. Clarke is situated within the said northern moiety of the said estate, the same being divided, as nearly as may be, by a line running from east to west through the said estate, and that he report thereon with all convenient speed.

Master's report.

March 11*th*, 1817.

In chancery, in the matter of the petition of Thomas B. Clarke.

STATE OF NEW YORK, *ss:*

In pursuance of a decretal order of this honorable court, made in the above matter, bearing date the eighth day of March, in the year of our Lord one thousand eight hundred and seventeen, by which, among other things, it was ordered, adjudged, and decreed, that it be referred to one of the masters of this court to inquire whether any of the property

sold or mortgaged by the said Thomas B. Clarke is situated within the northern moiety of the estate described in the said order, the same being divided as nearly as may be by a line running from east to west through the said estate, and that he report thereon with all convenient speed; now, therefore, I, the subscriber, one of the masters of this honorable court, do report, that no part of the property sold or mortgaged by the said Thomas B. Clarke is situated within the northern moiety of the estate, described in the said order, the same being divided as nearly as may be by a line running from east to west through the said estate, which line will pass through a street called Twenty-sixth street.

All which is most respectfully submitted.

JAMES A. HAMILTON,
Master in chancery.

March 11*th*, 1817.

Filed 19th March, 1817, as of the 15th March, 1817.

Order of chancellor.

March 15, 1817.

At a court of chancery, held for the State of New York, at the city hall of the city of New York, on the fifteenth day of March, in the year of our Lord one thousand eight hundred and seventeen; present, the honorable James Kent, esquire, chancellor. In the matter of the petition of Thomas B. Clarke.

On reading and filing the report of James A. Hamilton, esquire, one of the masters of this court, bearing date the eleventh day of March, one thousand eight hundred and seventeen, by which it appears that no part of the northern moiety of the estate at Greenwich, mentioned in the petition of the above named petitioner, the same being divided into two equal parts by a line running from east to west, through a street called Twenty-sixth street, has been either sold or mortgaged by the said Thomas B. Clarke, and it appearing to this court reasonable and proper that the prayer of the said petitioner should be granted, it is thereupon ordered, on motion of Mr. S. Jones, solicitor for the petitioner, that the said petitioner be, and he is hereby authorized to sell and dispose of the southern moiety of the said estate, the same being divided by a line running east and west through the centre of Twenty-sixth street aforesaid, together with the lot in Broadway, instead of the eastern moiety of the said estate, as permitted and directed by the orders heretofore made in the premises. And it is further ordered, that the said Thomas B. Clarke be, and he hereby is, authorized to mortgage all or any tract or parts of the said southern moiety of the said estate, if in his judgment it will be more beneficial to mortgage them than to sell the same. And the said Thomas B. Clarke is further authorized to convey any part or parts of the said southern moiety of the said estate, in payment and satisfaction of any debt or debts, due and owing from the said Thomas B. Clarke, upon a valuation to be agreed on between him and his respective creditors; provided, nevertheless, that every sale,